

No. 16131 ✓

United States
Court of Appeals

for the Ninth Circuit

ARTHUR S. FLEMMING, Secretary of Health,
Education and Welfare of the United States,
Appellant,

vs.

HELMER F. LINDGREN, Appellee.

Transcript of Record

Appeal from the United States District Court
for the District of Oregon

FILE

DEC 12 1958

PAUL P. O'BRIEN,



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In The District Court of the United States
For The District of Oregon

Civil No. 9289

HELMER F. LINDGREN, Plaintiff,

vs.

MARION B. FOLSOM, Secretary of Health, Edu-
cation and Welfare of the United States,
Defendant.

COMPLAINT

Comes now the Plaintiff, and for cause of action
against the Defendant, complains and alleges as
follows:

I.

This is a civil action and arises under the laws
of the United States of America providing for so-
cial security, and jurisdiction of this cause rests
upon Title 42, United States Code, Section 405(g)
(Social Security Act Section 205(g)).

II.

That at all times herein mentioned Plaintiff was
and now is a resident of the State of Oregon.

III.

That the Defendant, Marion B. Folsom, is the
duly commissioned, qualified and acting Secretary
of Health, Education and Welfare.

IV.

That during all of the years 1953 and 1954, the Plaintiff was employed as an employee by Lindgren & Company, an Oregon corporation, and received wages from said company as follows: \$3,600.00 in 1953—\$2,925.00 in 1954. Lindgren & Company reported said wages to the District Director of Internal Revenue in Portland, Oregon and paid the Federal income taxes withheld and the social security contributions due thereon. The Plaintiff filed Federal income tax returns for the years 1953 and 1954 with the District Director of Internal Revenue in Portland, Oregon and reported the wages received from Lindgren & Company in the sums of \$3,600.00 and \$2,925.00, respectively, for the said years 1953 and 1954, and paid the income taxes due thereon.

V.

That the Plaintiff attained the age of 65 on March 31, 1954. On or about October 25, 1954 and January 4, 1955, the Plaintiff applied to the Department of Health, Education and Welfare, Social Security Administration, for old age insurance benefits. On or about October 30, 1956, the Department of Health, Education and Welfare, Social Security Administration, denied the Plaintiff's claim for old age insurance benefits.

VI.

On or about November 8, 1956, the Plaintiff filed a Protest with the Department of Health, Education and Welfare, Social Security Administration,

District Office, Portland, Oregon, requesting a hearing before a Referee of the Social Security Administration. On or about April 3, 1957, a hearing was held before Edward K. Adelsheim, Referee of the Social Security Administration. On or about April 8, 1957, the said Referee of the Social Security Administration entered his decision that the claimant was not entitled to old age insurance benefits.

VII.

On or about April 24, 1957, the Plaintiff filed a request for review of the Referee's decision with the Department of Health, Education and Welfare, Social Security Administration, Office of Appeals Council. On or about June 7, 1957, the Office of Appeals Council issued its order denying the request of the Plaintiff for review of the Referee's decision.

VIII.

The denial by the Department of Health, Education and Welfare, Social Security Administration, of the Plaintiff's claim for old age insurance benefits was based upon said Administration's determination that the Plaintiff was not paid "wages" in 1953 and 1954, other than the sum of \$744.84 in the first quarter of 1954, for the reason that the employing corporation did not earn sufficient income to warrant said "wages".

IX.

The determination by the Department of Health, Education and Welfare, Social Security Admin-

istration, that the Plaintiff did not receive wages during the years 1953 and 1954, other than the sum of \$744.85 in the first quarter of 1954, is erroneous for the following reasons:

(1) There is no substantial evidence to support the finding by the Department of Health, Education and Welfare, Social Security Administration, that the Plaintiff did not receive wages during 1953 and 1954 in the sums of \$3,600.00 and \$2,925.00, respectively.

(2) The Department of Health, Education and Welfare, Social Security Administration, erroneously applied the law to the facts surrounding the Plaintiff's employment by determining that the Plaintiff did not receive wages during the years 1953 and 1954 in the sums of \$3,600.00 and \$2,925.00, respectively, because the employing corporation did not show sufficient profits to support the payment of such wages to the Plaintiff.

Wherefore, Plaintiff demands judgment of this Court reversing the decision of the administrator and determining that the Plaintiff received wages under the Social Security Act during the years 1953 and 1954 in the sums of \$3,600.00 and \$2,925.00, respectively.

JACOB, JONES & BROWN,

/s/ By EUGENE E. FELTZ,

Of Attorneys for Plaintiff.

Duly Verified.

[Endorsed]: Filed July 23, 1957.

[Title of District Court and Cause.]

ANSWER

Comes now the defendant, by and through C. E. Luckey, United States Attorney for the District of Oregon, and Edward J. Georgeff, Assistant United States Attorney, and for answer to plaintiff's complaint on file herein admits, denies and alleges as follows:

I.

1. Defendant admits the allegations in Paragraphs, I, II, III, VI and VII of the complaint.

2. Defendant denies the allegations in Paragraph IV of the complaint except that he admits that returns were filed in the name of Lindgren and Company with the Internal Revenue Service in Portland, Oregon, purporting to show payment of alleged wages to the plaintiff in the sum of \$3,600 in 1953 and \$2,925 in 1954, and paying purported Federal Insurance Contributions Act taxes on such alleged payment of wages. Defendant also admits that the plaintiff filed "income tax returns" for the years 1953 and 1954 and reported the receipt of the aforesaid alleged wages in the sums of \$3,600 and \$2,925, respectively, for the said years 1953 and 1954, and paid purported income taxes thereon.

3. Defendant admits the allegation in Paragraph V of the complaint, but further answering the allegation that plaintiff "on or about October 25, 1954, and January 4, 1955" applied for old-age insurance benefits, defendant states that an applica-

tion for such benefits, filed by the plaintiff on October 25, 1954, was withdrawn by the plaintiff, who filed a second application on January 4, 1955.

4. Defendant denies the allegations in Paragraph VIII of the complaint, except that he admits that the said Lindgren and Company only had a total net profit in 1953 and 1954 of \$744.84, which amount the referee found to be allocable to plaintiff's Social Security Account as "wages" for the first quarter of 1954.

5. Defendant denies the allegations in Paragraph IX of the complaint.

II.

The plaintiff has no claim upon which relief can be granted, as is shown by the provisions of the Social Security Act, as amended; the regulations of the Social Security Administration promulgated thereunder; the transcript of the record upon which the decision complained of was made; and the findings and conclusions of the Secretary of Health, Education and Welfare.

III.

The findings of fact of the Secretary of Health, Education and Welfare are supported by substantial evidence and are conclusive.

IV.

In accordance with the provisions of Section 205 (g) of the Social Security Act, as amended, 42 U.S.C.A. 405 (g), defendant files herein as part

of this answer a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are based.

Wherefore, defendant prays for judgment dismissing the complaint with costs and disbursements, and for judgment in accordance with Section 205 (g) of the Social Security Act, as amended, 42 U.S.C.A. 405 (g), affirming the decision complained of.

C. E. LUCKEY,
United States Attorney
for the District of Oregon,
/s/ EDWARD J. GEORGEFF,
Assistant United States Attorney.

Certificate of Service by Mail Attached.

[Endorsed]: Filed October 31, 1957.

[Title of District Court and Cause.]

MOTION FOR SUMMARY JUDGMENT

Comes now the defendant above-named, by and through his attorneys of record, C. E. Luckey, United States Attorney for the District of Oregon, and Edward J. Georgeff, Assistant United States Attorney, and moves the Court as follows:

To enter summary judgment for the defendant in accordance with the provisions of Rule 56 (b) of the Federal Rules of Civil Procedure, on the grounds that the pleadings and certified copy of the transcript of record of proceedings relating to the

claim of plaintiff before the Social Security Administration filed herein with the answer, pursuant to the provisions of 42 USC 405 (g), show that there is no genuine issue as to any material fact and that the defendant is entitled to a judgment as a matter of law, affirming the decision of the Social Security Administration.

In further support of this motion, there is attached hereto and filed herewith, defendant's memorandum brief.

C. E. LUCKEY,
United States Attorney,
District of Oregon,
/s/ EDWARD J. GEORGEFF,
Assistant United States Attorney,
Of Attorneys for Defendant.

Certificate of Service by Mail Attached.

[Endorsed]: Filed December 27, 1957.

[Title of District Court and Cause.]

OPINION

Before: Honorable William G. East, U. S. District Judge.

U. S. Courthouse, Portland, Oregon, May 5, 1958—10:00 a.m.

The Court: The Court has heard the arguments of the plaintiff and has heard the statement of counsel for the defendant that the defendant relies

upon the record as it now is presented. I have had an opportunity to review the record and I am of the firm opinion, as found by the referee, that there was no fraudulent intent or deceitful purpose on the part of the petitioner in forming his corporation with the view of tending to qualify for old age assistance. I see nothing different in this tightly-owned private corporation as to the management of an individual business than any of the thousand others in the United States.

Now, the defendant has taken the position that by reason of the fact that the corporation paid the plaintiff a salary and sustained a net operating loss of \$1644.17, being the year 1953, and the sum of \$45.99 in 1954, this employee or officer of the privately-owned corporation would not be entitled to the benefit.

Now, I can well imagine the act of an individual who was incorporated himself and then from his own funds put in \$25,000 in the corporation and then paid himself back \$25,000 salary for some tax purpose would indicate a deceitful or fraudulent intent. But, as I stated, this record is absolutely devoid of any fraud or deceit on the part of this plaintiff; in fact, he acted only on the advice of advisors.

So, it seems to me that in view of the fact that the corporation is solvent capital-wise as it holds these certificates which it has retained for income tax purposes, and they are more than sufficient to repay any loan that the plaintiff may have made

to the corporation, that it falls completely within the ruling of *MacPherson versus Ewing*, 107 Federal Supplement, 666. And, I can find no other finding as far as the matter of law is concerned except to quote that case and say: "Upon the record, therefore, the decision of the Administrator must be considered, in law, to be arbitrary and capricious." The motion for summary judgment on behalf of the defendant is denied. Plaintiff may have an order referring this matter back to the Administrator for appropriate proceedings.

Certified A True and Accurate Transcript:

/s/ JACK ELLIS,

Official Court Reporter.

[Endorsed]: Filed May 5, 1958.

[Title of District Court and Cause.]

ORDER DENYING DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT AND DI-
RECTING JUDGMENT FOR PLAINTIFF

This matter having come on before the Court upon the motion of the defendant for a summary judgment for the defendant, and the defendant having appeared by and through his attorneys of record, C. E. Luckey, United States Attorney for the District of Oregon, and Edward J. Georgeff, Assistant United States Attorney, and the plaintiff having appeared by and through his attorneys, Jacob, Jones & Brown and Eugene E. Feltz, and the respective parties having submitted briefs in sup-

port of their respective positions, and the Court having fully examined the pleadings and the transcript of the record filed by the defendant; and

It appearing to the Court that the decision of the defendant, denying the claim of the plaintiff for social security benefits, was based upon an erroneous application of the law to the facts of the case and must be considered, in law, to be arbitrary and capricious;

Now, Therefore, It Is Hereby Ordered that the motion of the defendant for a summary judgment be and the same is hereby denied; and

It Is Further Ordered that the judgment be entered for the plaintiff on his complaint herein.

Dated this 9th day of June, 1958.

/s/ WILLIAM G. EAST,
Judge.

[Endorsed]: Filed June 9, 1958.

In The United States District Court
For The District of Oregon

Civil 9289

HELMER F. LINDGREN, Plaintiff,

vs.

MARION B. FOLSOM, Secretary of Health, Edu-
cation, and Welfare, Defendant.

JUDGMENT

This matter having come on before the Court upon the motion of the defendant for a summary judgment, and the defendant having appeared by and through his attorneys of record, C. E. Luckey, United States Attorney for the District of Oregon, and Edward J. Georgeff, Assistant United States Attorney, and the plaintiff having appeared by and through his attorneys, Jacob, Jones & Brown and Eugene E. Feltz, and the respective parties having submitted briefs in support of their respective positions, and the Court having fully examined the pleadings and the transcript of the record filed by the defendant; and

It appearing to the Court that the decision of the defendant denying the claim of the plaintiff for social security benefits was based upon an erroneous application of the law to the facts of the case and must be considered, in law, to be arbitrary and capricious, and it further appearing that

the record on file contains no evidence whatsoever of any fraud or deceit on the part of the plaintiff in his claim for old-age insurance benefits; and

It further appearing to the Court that plaintiff received wages subject to the Social Security Act during the years 1953 and 1954 in the sums of \$3,600.00 and \$2,925.00 respectively, and is entitled to old-age insurance benefits based thereon;

Now, Therefore, It Is Hereby Ordered and Decreed that the decision of the defendant denying the plaintiff's claim for old-age insurance benefits, based upon wages of \$3,600.00 and \$2,925.00 earned in 1953 and 1954, respectively, be and the same is hereby reversed; and

It Is Further Ordered and Decreed that this cause be, and the same is, hereby remanded to the defendant for administrative action allowing the claim of the plaintiff for old-age insurance benefits based upon wages earned during the years 1953 and 1954 of \$3,600.00 and \$2,925.00 respectively.

Dated this 9th day of June, 1958.

/s/ WILLIAM G. EAST,
Judge.

[Endorsed]: Filed June 9, 1958.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To: Helmer F. Lindgren, Plaintiff, and Jacob, Jones & Brown and Eugene E. Feltz, Attorneys for Plaintiff:

Notice is hereby given that Marion B. Folsom, Secretary of Health, Education, and Welfare, defendant above named hereby appeals to the United States Court of Appeals for the Ninth Circuit from the order entered May 5, 1958 denying the defendant's motion for summary judgment and from the order denying defendant's motion for summary judgment and directing judgment for the plaintiff entered June 9, 1958, and from the judgment filed and entered in favor of the plaintiff and remanding to the defendant for administrative action allowing the claim for old-age insurance benefits based upon wages earned during 1953 and 1954 of \$3600.00 and \$2,925.00 respectively, entered on June 9, 1958.

Dated this 2nd day of July, 1958, at Portland, Oregon.

/s/ C. E. LUCKEY,

United States Attorney For the District of Oregon,
Of Attorneys for Defendant.

[Endorsed]: Filed July 2, 1958.

[Title of District Court and Cause.]

DOCKET ENTRIES

1957

July 23—Filed complaint.

July 23—Issued summons—to marshal.

Aug. 21—Filed summons—with Marsal's returns.

Sept. 20—Filed Stipulation for extension of time
for defendant to answer.

Sept. 20—Filed and entered Order allowing extension of time for defendant to answer to
and including October 31, 1957.

Oct. 31—Filed Answer.

Dec. 27—Filed deft's Motion for summary judgment and Memorandum Brief in Support thereof.

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Feb. 3—Record of hearing upon Motion for Summary Judgment; submitted.

Feb. 3—Entered Order allowing pltf sixty days from date hereof within which to file brief.

Apr. 3—Entered Order extending time for plaintiff to file brief to and including May 5, 1958.

Apr. 30—Filed Supplemental Brief of United States in Support of Motion for summary judgment.

May 5—Entered Order that defendant's motion for summary judgment be denied;
Entered Order that pltf submit appropriate order referring matter to Administrator.

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- June 9—Filed and Entered Order denying defendant's Motion for summary judgment and directing judgment for plaintiff.
- June 9—Filed and Entered Judgment in favor of plaintiff and remanding to defendant for administrative action allowing claim for old-age insurance benefits based upon wages earned during years 1953 and 1954 of \$3,600.00 and \$2,925.00 respectively.
- July 2—Filed Notice of Appeal by defendant (Copy mailed to Jacob, Jones & Brown).
- Aug. 6—Filed Designation of contents of record on appeal.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
District of Oregon—ss.

I, R. DeMott, Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing documents consisting of Complaint; Answer; Motion for summary judgment; Order denying defendant's motion for summary judgment and directing judgment for plaintiff; Judgment; Notice of appeal; Designation of contents of record on appeal and Transcript of docket entries constitute the record on appeal from a judgment of said court in a cause therein numbered Civil 9289, in which Marion B. Folsom,

Secretary of Health, Education and Welfare of the United States is the defendant and appellant and Helmer F. Lindgren is the plaintiff and appellee; that the said record has been prepared by me in accordance with the designation of contents of record on appeal filed by the appellant, and in accordance with the rules of this court.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 7th day of August, 1958.

[Seal] R. DeMOTT,
 Clerk,
 /s/ By THORA LUND,
 Deputy.

In The United States District Court
For The District of Oregon

Civil Action No. 9289

HELMER F. LINDGREN, Plaintiff,

vs.

MARION B. FOLSOM, Secretary of Health, Edu-
cation, and Welfare, Defendant.

TRANSCRIPT OF PROCEEDINGS

Certification

I, Joseph E. McElvain, Chairman, Appeals Council, Social Security Administration, Department of Health, Education, and Welfare, under authority

conferred upon me by the Secretary, hereby certify that the documents annexed hereto constitute a full and accurate transcript of the entire record of proceedings relating to the claim of Helmer F. Lindgren for old-age insurance benefits under Title II of the Social Security Act, as amended, such transcript including application for benefits, testimony and other evidence upon which the decision of the referee of the Appeals Council, Social Security Administration, was based.

Dated: October 2, 1957.

[Seal] /s/ JOSEPH E. McELVAIN,
Chairman, Appeals Council, Social Security Administration, Department of Health, Education and Welfare.

* * * * *

Department of Health, Education, and Welfare,
Social Security Administration, Office of Appeals Council.

REFEREE'S DECISION

In the case of Helmer F. Lindgren (Claimant).
Case No. PO-445. Claim for Old-Age Insurance Benefits. Helmer F. Lindgren (Wage Earner).
544-34-6929 (Social Security Acct. No.).

This case is before the referee upon a request for hearing filed on November 10, 1956 by Helmer F. Lindgren, the claimant. He appeals from a determination by the Bureau of Old-Age and Survivors Insurance of the Social Security Administration disallowing his application for old-age insurance

benefits. A hearing at which the claimant appeared personally and by his attorneys, Garthe Brown and Eugene E. Feltz, was held on April 3, 1957 at Portland, Oregon.

The claimant, who attained age 65 on March 31, 1954, filed application for old-age insurance benefits on October 25, 1954. He withdrew this application and filed a second application on January 4, 1955. Both applications were based upon claimant's employment for Lindgren and Company of Portland beginning January 1953. The Bureau determined that an insured status could not be established on the basis of remuneration reported for the claimant for social security tax purposes by Lindgren and Company, and claimant was notified by letter dated October 30, 1956 of the disallowance of his application on the ground that he had only one of the six quarters of coverage necessary in his case for a fully insured status. Without asking for reconsideration, claimant requested a hearing.

The issue before the referee is whether the claimant is a fully insured individual and entitled to old-age insurance benefits under provisions of the Social Security Act. This depends upon whether remuneration reported by Lindgren and Company as paid to the claimant in 1953 and 1954 is creditable to his social security account as "wages," under section 209 of the Act.

Section 202(a) of the Social Security Act, as pertinent hereto, provides for the payment of old-age insurance benefits to every individual who is a fully insured individual, and section 214(a)(2)(A)

of the Act defines a fully insured individual to mean one who has at least six quarters of coverage. A quarter of coverage under section 213(a)(2)(B) of the Act means a calendar quarter in which the individual has been paid wages of at least \$50. The pertinent part of section 209(g) defines "wages" as remuneration paid after 1950 for employment. It is unquestioned here that as an officer of Lindgren and Company, commencing in February 1953, the claimant was in an employment relationship, within the meaning of section 210 of the Social Security Act, and, specifically, section 210 (k) (1).

In his application for benefits the claimant stated that he was an employee of Lindgren and Company from January 1953 and was still working. It is shown that remuneration to the claimant was reported as wages, as follows: \$900 per quarter in all four quarters of 1953 and the first three quarters of 1954 and \$225 in the fourth quarter of 1954.

As of December 7, 1954, according to Oregon State Corporation Department, Lindgren and Company was an Oregon corporation in good standing. It came into existence February 2, 1953 by changing its name from Snow-Williams Motors, Inc., which former corporation had been organized March 3, 1952. The registered agent for Lindgren and Company was the claimant, and the purpose of the corporation was livestock breeding, raising fryers, and farming. The claimant had reported self-employment income of \$1,428.46 for 1951. Investigation in the last quarter of 1952 disclosed that the nature of claimant's business was raising fryers on

a three-acre tract on the edge of Portland. The claimant indicated he and his wife spent 90 per cent of their time raising fryers and 10 per cent in retailing. A determination was made that claimant's income from this business was excluded from net earnings from self-employment, and he was so informed sometime in about December 1952. Because of this information he consulted his attorneys about arrangements necessary to obtain social security coverage. Thereupon Lindgren and Company was organized for the primary purpose of obtaining social security coverage for the claimant. The directors of Snow-Williams Motors, Inc., are not related to or known to the claimant. The reason for taking over the articles of incorporation of Snow-Williams Motors, Inc., was one of economy. There is of record a certificate of filing supplemental articles of incorporation showing the change in capitalization of the Snow-Williams Motors, Inc., the change of name to Lindgren and Company, and the change of business from the automobile business to farming and poultry. There is also a copy of a bill of sale dated February 13, 1953 showing that for consideration of \$10, the claimant transferred to Lindgren and Company twenty-two hundred head of chickens valued at \$1,400, six head of cattle valued at \$600, seven brooders valued at \$200, and four incubators valued at \$300. Thus, the initial assets of the corporation totalled \$2,500, represented by 25 shares of stock at \$100 each. Originally the claimant and his wife owned 24 shares, one share being owned by Shirley W. Barker, claimant's stepson, who was a

director and the vice-president of the corporation. By Oregon statute enacted in 1953, it no longer was necessary for all directors of a corporation to be stockholders, and it is alleged that subsequently Mr. Barker endorsed his one share of stock over to the claimant and his wife.

In a statement dated April 9, 1956, Mr. Barker declared: "Lindgren and Company has operated at all times on a cash basis. Original cash on hand from sale of capital stock (\$2500) plus receipts from sales has been sufficient to meet its obligations." It is shown that Mr. Barker was in error in stating the corporation originally acquired a cash asset from the sale of capital stock.

The claimant has been president of the corporation since its inception, and his wife has been secretary and treasurer. Although apparently up to 1953 she spent as much time working in the business as did the claimant, it is alleged that from February, 1953 on she devoted decreasing amounts of her time in services for the corporation; her work was mainly bookkeeping, in which the claimant assisted. The claimant's wife has received no remuneration for her services to the corporation.

At a meeting of the Board of Directors on February 13, 1953, the salary of the claimant as president of the corporation was set at \$300 a month, beginning with January 1953; this amount times 12 was the exact maximum creditable annually for social security purposes. On September 22, 1954, at a directors' meeting, a resolution was passed reducing the president's salary to \$75 a month. The stated

reason was that business was poor and the corporation was running behind every month. It is noted that under section 203(b)(1) of the Social Security Act in effect in October 1954, a beneficiary under age 75 was not entitled to a benefit for any month in which he rendered services for wages of more than \$75. The claimant first applied for benefits in October 1954. As of April 1955, the Board of Directors raised the president's salary to \$100 a month. It is not shown that this increase was occasioned by any improvement in the company's business or financial position. Again, it is noted that under 1954 Amendments of the Social Security Act effective in January 1955 a beneficiary may have \$1,200 in earnings in any 12-month taxable year without incurring loss of benefits.

The evidence clearly demonstrates that the business of the corporation was conducted in the same manner after incorporation as the claimant had conducted it before, as a sole proprietorship.

Oregon corporation excise tax returns for 1953 and 1954 showed the following income and expenses:

	Income	
	1953	1954
Fryer sales	\$ 8,344.40	\$7,950.68
Meat sales	327.56	643.09
Egg sales	330.10	8.53
Sack sales	145.36	158.72
Feed rebate	556.75	675.57
Interest	27.50	43.50
<hr/>		
Total receipts	\$ 9,731.67	\$9,480.09

Expenses		
	1953	1954
Feed	\$ 6,877.73	\$6,126.74
Compensation of officers	3,600.00	2,925.00
Depreciation	20.00	20.00
Taxes:		
Social security	54.00	58.50
Corporation	10.00	10.00
Briquets	144.70	22.40
Chickens	86.00	16.00
Hay	265.00	175.68
Electricity	163.35	122.76
Calves	52.00	39.00
Legal and accounting....	103.06	—
	<hr/>	<hr/>
Total	\$11,375.84	\$9,516.08

The State tax returns show the corporation suffered a loss of \$1,644.17 in 1953 and \$35.99 in 1954. Federal corporation income tax returns, copies of which are of record, are in exact agreement with the State return for 1953 and in substantial agreement with the State return for 1954.*

For the corporation to meet its obligations, including the claimant's salary, it was necessary for it to borrow money. There are of record copies of four demand notes which indicate the corporation's promise to pay to the wage earner on demand the value of the note. These notes are dated February 13, 1953, for \$800; May 22, 1953, for \$500; Novem-

* The Federal tax return for 1954 shows a loss of \$45.99; an additional deduction of \$10 is shown.

ber 18, 1953, for \$600; and July 1, 1954, for \$1,000. Across the face of the note for \$800 dated February 13, 1953 is a notation by the claimant to the effect that \$600 was paid on December 31, 1955. There is no showing in the corporation's tax return for 1955 of payment on this note. All the notes are signed by the wage earner and his wife, but do not show the corporate seal or corporate signature of the corporation. It is not shown by corporate minutes that the claimant and his wife were authorized to negotiate loans on behalf of the corporation.

The claimant allegedly received his salary at the end of each quarter. Copies of salary checks in file show that social security tax and State tax (except one) were deducted; six checks show a deduction for Federal withholding tax. Twelve checks were received, one for each quarter of 1953, 1954, and 1955. The checks are drawn on the First National Bank of Portland, and the bank states that the cancellation perforations are genuine. A bank official was unable to state whether the checks were merely cashed or deposited to some account. One of the checks, that for September 30, 1954, bears the endorsement "Deposited to the credit of Lindgren & Co.," which would indicate that it was cashed by the company or deposited to the company's checking account. The claimant had personal savings accounts, but no checking account. By way of explanation the claimant stated on May 10, 1956 that as president of Lindgren and Company, he made cash sales of chickens, eggs, etc., and from these cash sales he took certain amounts as advances on his

wages. At the end of each quarter, a check was issued to him by the corporation for the full amount of his salary, less withholding taxes and social security deductions. He would then use part of his check to reimburse the company for the amount of advances on his wages made during the quarter for which the wages were paid. This was done by depositing parts of the checks he received as wages in the company's bank account. This was the reason the cancelled check dated September 30, 1954 was deposited to the credit of Lindgren and Company. He stated that there is no confusion of funds of the corporation with his own personal funds. The referee has examined all checks and monthly statements in 1953 and 1954 of the company's checking account. It appears that this account was used exclusively for company business.

The record shows that the business of the corporation was conducted on a farm owned by the claimant and his wife, title to which was never transferred to the corporation. The tax returns for 1953 and 1954 do not show any expense for rent. The 1955 Federal corporation income tax return shows an expense for rent of \$600. According to a Report of Contact dated October 19, 1955, the claimant stated that he did not charge the corporation any rental for use of the farm. In a statement dated April 9, 1956, William Barker alleged that 1955 was the first year in which the corporation had shown sufficient profit to pay rent on the farm property used for the business. No rental was paid for the property for 1953 or 1954. Garthe Brown,

one of the claimant's attorneys, in a Report of Contact dated May 4, 1956, is shown to have stated that \$50 a month was considered a fair rental for the farm of the wage earner through the entire period, but was not paid in 1953 and 1954 because of lack of funds. He stated that the \$1,200 rent for 1953 and 1954 is still an outstanding obligation of the corporation.

Upon careful consideration of all the evidence of record, the referee finds that except for \$744.84, which is allocable to the first quarter of 1954, the claimant was not paid "wages" in 1953 and 1954 by Lindgren and Company, within the meaning of section 209 (g) of the Social Security Act. The corporation's tax returns for 1953 and 1954 reflected neither the personal loans made by the claimant to the corporation nor the rent of \$50 per month which the corporation was to pay for the use of the claimant's property. Except for \$744.84, the remuneration reported for the claimant for social security purposes represents repayment of funds which the claimant advanced to the corporation. After the repayment of such advances, the corporation did not show sufficient profit to support a finding by the referee that the alleged remuneration constituted "wages." The amount of \$744.84 represents the net profit for 1953 and 1954, after eliminating the expense of the claimant's salary for the two years and deducting rent and the money loaned by him to the corporation during these two years. Following is a fair reconstruction of the company's financial status:

	1953	1954
Expense including salary	\$11,375.84	\$9,516.08
Less salary	3,600.00	2,925.00
Expense without salary .	7,775.84	6,591.08
Income	9,731.67	9,480.09
Less expense without salary	7,775.84	6,591.08
Net profit before deducting loans and rent	1,955.83	2,889.01
Less loans by claimant .	1,900.00	1,000.00
	55.83	1,889.01
Less rent	600.00	600.00
Net profit without salary(Loss)	544.17	1,289.01
Net loss in 1953		544.17
Net profit for 1953 and 1954 available for salary		744.84

Where an employee exercises control over a corporation because of stock ownership and his power as a director or officer, transactions between him and the corporate entity require very close scrutiny to distinguish between "wages," on the one hand, and dividends or distribution of corporate assets on the other. Here, the claimant, who was the president and stockholder of a corporation whose stock was owned exclusively by himself and his wife, ad-

vanced money to it when necessary and withdrew funds from the corporation at irregular intervals and in irregular amounts as funds were available and in accordance with his personal needs. The referee has noted above that initially the claimant's salary was set at the exact maximum creditable for social security purposes, and that subsequently changes in salary were made for no apparent reason except to permit continuous benefit payments without deductions because of wages or earnings in excess of the statutorily-permitted amounts. Although the referee assumes good faith on the part of the claimant, he regards the case of *Gancher v. Hobby*, 145 F. Supp. 461 (D. Conn. 1955) as of precedent value in the disposition of the instant claim.

It is the further finding of the referee that the claimant, being credited with only one quarter of coverage, does not have the status of a fully insured individual under the applicable provisions of the Social Security Act.

It is the decision of the referee that the claimant is not entitled to old-age insurance benefits based upon his application of January 4, 1955.

Dated: April 8, 1957.

/s/ EDWARD K. ADELSHEIM,
Referee.

* * * * *

Department of Health, Education and Welfare.
Case No. PO-445.

Hearing held at Portland, Oregon on April 3, 1957.

Referee: Edward K. Adelsheim.

Referee: I would like to state what I consider to be the issue to see if you understand what will be before me for written decision as I understand it. The general issue is whether Mr. Lindgren is a fully insured individual and entitled to old-age insurance benefits for which he made application. This would be under applicable provisions of the social security law. Specifically, this will depend upon, the general issue will turn on, depend upon, whether remuneration reported by Lindgren and Company, commencing January, 1953, should be credited to his social security account as wages, under section 209 of the Social Security Act. Is that as you understand what the decision before me will be?

Mr. Feltz: Yes.

Mr. Brown: Yes. [26]

* * * * *

Testimony

HELMER F. LINDGREN

claimant, and Garthe Brown and Eugene E. Feltz, attorney-representatives, being first duly sworn, testified as follows:

Examination By Referee:

Referee: I'll start with Mr. Lindgren. First of all, I want to make sure I have your address correctly. Is it 7921 Southeast King Road, Portland 22?

* Page numbers appearing at top of page of Reporter's Transcript of Record.

(Testimony of Helmer F. Lindgren.)

Claimant: Yes, sir.

Referee: The first thing I want to do, Mr. Lindgren, is to clear up Mr. Barker's status. I understand he was a vice president and a director of the corporation. Is that correct?

Claimant: Yes, sir.

Referee: Was he also a stockholder?

Claimant: Yes, sir.

Referee: Are you sure?

(No answer.)

Referee: Are you sure?

Claimant: Well, yes.

Referee: How many shares of stock did he own?

Claimant: One.

Referee: How many shares of stock did you own?

Claimant: Twenty-four.

Referee: How many did your wife own? [28]

Claimant: Well, we had the 24 together.

Referee: You and your wife owned them together?

Claimant: Yes.

Referee: After you learned, toward the end of 1952, that your being self-employed raising chickens didn't count for social security purposes, did you consult attorneys to see what you could do about it?

Claimant: Yes.

Referee: You went to Mr. Brown and Mr. Feltz

(Testimony of Helmer F. Lindgren.)

to see what you could do about getting covered for social security?

Claimant: Yes.

Referee: Is that why the corporation was formed?

Claimant: Yes.

Referee: As I understand it, you and Mrs. Lindgren both worked full time raising the chickens and eggs, and retailing them. Is that correct?

Claimant: Retailed some; we wholesaled most of them.

Referee: Wholesaled some, too; is that right?

Claimant: Yes.

Referee: Did you and your wife each put in about the same amount of time raising and selling the chickens?

Claimant: I did the raising and selling.

Referee: I'm looking at Exhibit 4. This was on December 18, 1952. There was an interview with you, in the course of which you indicated that approximately 90 per cent of your time and your wife's time was spent at raising the fryers, and 10 per cent in retailing. Is that correct, or not?

Claimant: Well, I don't recall that.

Mr. Feltz: Perhaps you could show him this exhibit and when he sees his handwriting he could tell.

Referee: It isn't his handwriting. It's a write-up of an interview——

(Mr. Feltz shows Exhibit 4 to claimant.)

(Testimony of Helmer F. Lindgren.)

Mr. Feltz: Mr. Lindgren hasn't signed or written it. I don't see how he could testify to it.

Referee: I didn't say anything about testifying to it. I said he indicated at that time that this was the distribution of time. I'm asking, is that correct? Did your wife work about the same amount of time you did?

Claimant: Not in the raising of poultry.

Referee: What was her work?

Claimant: She was a housewife.

Referee: In 1953 and 1954 and 1955, did she work in connection with the raising of the fryers, did she do any work?

Claimant: Nothing. No.

Referee: Nothing whatsoever?

Claimant: No. Not in the raising of them.

Referee: Did she do any of the selling?

Claimant: Well, sometimes, retail, but not much; some, she did.

Referee: Did she keep the records for the company?

Claimant: I—well—she—— [30]

Referee: Did you do that too?

Claimant: We both——

Referee: You both did?

Claimant: Yes.

Referee: How much of your time, would you say, was spent in connection with the business from 1953 on, and how much of your wife's?

Claimant: All of my time.

(Testimony of Helmer F. Lindgren.)

Referee: And how much of her time, would you say?

Claimant: I don't know what I'd say to that.

Referee: You have no idea?

Claimant: Well, just a small part.

Referee: Can you give me any idea what you have in mind?

Mr. Feltz: He's asking you in percentage.

Claimant: Maybe 10 per cent.

Referee: Only 10 per cent of her time was spent that way?

Claimant: Something like that, maybe.

Referee: Did she have anything to do with the feeding of the fryers?

Claimant: No.

Referee: Did she ever go out to the place where they were raised on your property?

Claimant: Oh, sure, sometimes she went out.

Referee: For what purpose did she go there?

Claimant: Well, just like anybody else would go out to see.

Referee: I'm curious as to why you told a representative [31] of the Portland social security office in 1952 that you and your wife spent about an equal amount of time in connection with the raising and retailing. That does not seem to be your statement now. Was the situation different in 1952 than——

Claimant: Well, she——

Referee: Let me ask the question. Was the sit-

(Testimony of Helmer F. Lindgren.)

uation, so far as time spent by your wife, different in 1952 than it was from 1952 on?

Claimant: Yes, she helped me more then than she did later.

Referee: Why?

Claimant: She was getting older, then, like the rest of us.

Referee: You mean to say her time went from 100 per cent down to 10 per cent?

Mr. Feltz: I object. There's a statement in that file which you have put in as evidence, signed by one of the representatives of the Social Security Administration, not signed by Mr. Lindgren. There is nothing in there which states that Mr. Lindgren signed or said that. I don't see why you keep on insisting on making him state she did put in 100 per cent of her time, when he didn't say she did.

Referee: There is a presumption in regard to the validity and accuracy of the reports made in the ordinary course of business conducted by public officials. That would explain——

Mr. Feltz: It would be to the correctness of the form, but not what is in the form.

Referee: There would be a presumption of the accuracy [32] and correctness of the write-up which the representative of the Social Security Administration gave in December, 1952, Exhibit 4.

Mr. Feltz: That presumption is not sustained by Mr. Lindgren. He has refuted that presumption and the presumption falls at that time. He said she did not put in more than 10 per cent. If you

(Testimony of Helmer F. Lindgren.)

had some other evidence that he said something different at that time, we would be glad to hear it.

Referee: I'll overrule your objection. I think the line of the questioning is relevant and, specifically, the last question. Was there a gradual decline, Mr. Lindgren, in the amount of work your wife did from 1952 on in connection with the raising and selling of fryers?

Claimant: Well, sure, she been working every year on it before 1953. In 1952 she used to help me all the time when we were raising poultry and turkeys. You are referring to that when I was denied that first time?

Referee: This was when you were denied in December, 1952. Why was it that when the corporation was formed Mrs. Lindgren received no remuneration for her work and you received it all?

Claimant: Well, that—she wasn't supposed to help with the poultry.

Referee: Why wasn't she?

Claimant: Isn't a wife supposed to be in the house taking care of the house?

Referee: You mean she helped with the poultry up to the time the corporation was formed, but not afterward? [33]

Claimant: She didn't help much before, either.

Referee: You said she did a lot through 1952.

Claimant: When we were raising turkeys before—that was in 1942, that was when she helped a lot.

Referee: Why is a wife supposed to help raise turkeys but not chickens?

(Testimony of Helmer F. Lindgren.)

Claimant: I don't know that. That was mostly up to her.

Referee: At the time that the corporation was organized in February, 1953, what cash was available to the corporation as operating capital, do you remember?

Claimant: Eight hundred dollars.

Referee: Eight hundred dollars?

Claimant: Yes.

Referee: That was money which you loaned?

Claimant: Yes.

Referee: Did you actually take that out of your bank account and deposit it to the corporation's account?

Claimant: Yes, sir.

Referee: You did?

Claimant: Yes, sir.

Referee: When you made other loans to the corporation in 1953 and in July, 1954, did you actually take funds out of your savings account and——

Claimant: No, sir.

Referee: You only took funds out of your account once? [34]

Claimant: Yes, sir.

Referee: In February 1953?

Claimant: Yes, sir.

Referee: The other loans which are represented by Exhibits 25, 26, and 27, those were the notes in July, 1954, May, 1953, and November, 1953, those three transactions didn't involve any transfer of

(Testimony of Helmer F. Lindgren.)

cash from your bank account to the corporation.
Is that correct?

Claimant: No, sir.

Referee: But you did withdraw \$800 from your savings account in February, 1953 and put it into the corporation's checking account. Is that right?

Claimant: Yes, sir.

Referee: When was the corporation's checking account started? Do you remember?

Claimant: Well, I can't say the date.

Referee: About the time that the corporation was formed you opened a checking account for the corporation?

Claimant: Yes, sir.

Referee: About February, 1953.

(Nodded affirmatively.)

Referee: Is your answer "Yes"?

Claimant: Yes, sir.

Referee: Was anything paid by any of the stockholders for the stock which was received in 1953 when the corporation was formed; was any cash paid to the corporation for its stock?

Claimant: No, sir. [35]

Referee: In Exhibit 19, which your step-son signed, he states: "Lindgren and Company has operated at all times on a cash basis. Original cash on hand from the sale of capital stock (\$2,500) plus receipts from sales has been sufficient to meet its obligations." That's wrong, isn't it? So far as "Original cash on hand from sale of capital stock plus receipts from sales has been sufficient

(Testimony of Helmer F. Lindgren.)

to meet its obligations''; that's an incorrect statement, isn't it?

Claimant: I don't understand.

Mr. Brown: I——

Referee: Do you wish to testify, Mr. Brown?

Mr. Brown: I think Mr. Barker is mistaken on that. The assets turned in for stock are shown on the bill of sale, are listed——

Referee: But no cash on hand from the sale of capital stock?

Mr. Feltz: Well, he, he——

Referee: One at a time, please, so we don't miss anything.

Mr. Brown: The cash was loaned to the corporation by Mr. Lindgren and the other assets, the ones listed, were turned in for exchange for stock.

Mr. Feltz: I wasn't around when he made that statement, but the fact that the cash on hand was from the fryers, the major item turned over was fryers, which were immediately turned into cash, sold in the ordinary course of business, that would——

Referee: The statement I referred to in Exhibit 19 reads this way: "Lindgren and Company has operated at all times on a cash [36] basis. Original cash on hand from the sale of capital stock (\$2,500) plus receipts from sales has been sufficient to meet its obligations."

Mr. Feltz: According to our information, that would be wrong.

Mr. Brown: That's wrong.

(Testimony of Helmer F. Lindgren.)

Referee: Have any of the stockholders ever paid anything in cash to the corporation for the stock, Mr. Lindgren?

Claimant: No.

Referee: Are you sure?

(No answer.)

Referee: So far as you know, that is true; is that correct?

Claimant: That's true.

Referee: Let me ask you a question, Mr. Brown.

Mr. Brown: Yes.

Referee: Exhibit 23 is the report of an interview with you. It reads in part: "Mr. Brown also stated that it is his memory"—this is the introduction to a question—"that the capital stock issued by the corporation is 50 shares at \$50 a share, 49 of which were owned by Mr. and Mrs. Lindgren and one share by Shirley Barker, vice president and stepson of the wage earner. The money for these shares of stock was not all paid into the company at one time, but only piece-meal as needed for operating expenses." How about that?

Mr. Brown: I think the agent has misconstrued or misunderstood what I told him. What I did was to tell him, in referring to the file, that the inventories were contributed to the corporation to provide money by which the corporation operated, plus loans which Mr. Lindgren made them.

Referee: Which were only made—one cash loan?

Mr. Brown: These other loans are represented

(Testimony of Helmer F. Lindgren.)

by notes, which [37] are evidence of cash he contributed to the company and replaced by a note.

Referee: He didn't actually transfer cash to the corporation's account.

Mr. Feltz: I object to that. In the file you asked him the question did he ever take money from any other bank account and put it into another bank account, but you didn't ask whether he took money and put it into the corporation.

Referee: I'll ask him. The three notes that followed the first note, what, if any, was the cash transaction involved?

Claimant: Well, that's what I received—wages from the company.

Referee: And you put it back in? You actually put it into the company's bank account?

Claimant: Yes, sir.

Referee: When the corporation lost money in 1953, did you have to draw on your savings account for living expenses?

(Reply not understandable.)

Referee: What?

Claimant: No. I probably drew some. I don't recall exactly.

Referee: If it is a fact that your savings account has been reduced steadily starting with 1953, would those reductions have gone for the living expenses of yourself and your wife, if that had happened?

Claimant: Yes, but the certificates——

Referee: What?

(Testimony of Helmer F. Lindgren.)

Claimant: I have been getting certificates every year from [38] the Co-op, prior to the corporation, that have come from the poultry Co-op.

Referee: This is income on which you live, at least in part, certificates from a Co-op.

Claimant: Yes.

Referee: Do you know why \$300 per month was reported as your wages in 1953, including January, 1953, when the corporation didn't start until February? Do you know why that was?

Claimant: Well, I turned into the corporation everything, all the business I had been doing that year.

Referee: What are the property taxes on the property used where the chickens are grown? Do you know?

Claimant: Around \$230.

Referee: When was it decided for the first time that the corporation should pay \$50 a month rent for the use of the property; do you know?

Claimant: I don't know.

Referee: Do you remember when it was first discussed?

Claimant: No, I don't.

Referee: Was rent discussed for the first time only after your social security application was turned down?

(No answer.)

Referee: Do you know?

Mr. Feltz: When was it turned down? Will you refresh my memory? [39]

(Testimony of Helmer F. Lindgren.)

Referee: It was turned down finally in October, 1956.

Claimant: It was before that.

Referee: What is that?

Claimant: The rent was paid before that.

Referee: When was rent paid?

Claimant: In 1955.

Referee: Why was it decided to pay rent in 1955 and not in 1954 and 1953?

Claimant: Can Mr. Brown answer that question?

Referee: I'm asking you.

Mr. Feltz: He's just asking whether you know. If you don't, just say so.

Claimant: I don't know.

Referee: Did your attorneys tell you you should state that the company paid rent in 1955, even though you hadn't so stated in 1954 or 1953?

Claimant: I don't recall.

Referee: You don't know.

Claimant: No.

Referee: Do you know how the rental value of \$50 per month was established, why it was set at \$50?

Claimant: Mr. Brown set that.

Referee: Mr. Brown set it?

Claimant: (Nodded affirmatively.)

Referee: Is this property worth more or less than \$50 [40] a month?

Claimant: No, I don't think so.

Referee: Or exactly \$50 a month?

(Testimony of Helmer F. Lindgren.)

Claimant: That's about right, I imagine.

Referee: Do you know what other farmers who have an operation of this size are paying for rent?

Claimant: No.

Referee: In Exhibit 10, which is a statment that you signed on December 23, 1954, you stated that beginning with October of that year your salary was reduced to \$75 a month, and that the reason for that reduction is due to the fact that the corporation was losing money. Then, you said, "It may be that we will dissolve it after the first of the year." Why were you considering in December, 1954 dissolving the corporation at the end of 1954?

Claimant: Because the corporation was losing money.

Referee: Is that the reason, or was it that you felt you would have you social security coverage and you didn't need the corporation any more?

Claimant: Probably is something in that, too.

Referee: Was that the main reason, that your social security coverage would be finished?

(No answer.)

Referee: Was that the main reason why you were considering dissolving the corporation? [41]

Claimant: Well, I, well——

Referee: What?

Claimant: I don't know.

Referee: It's your statement. I'm reading your signed statement. Your statement in Exhibit 10 is, "It may be that we will dissolve it after the

(Testimony of Helmer F. Lindgren.)

first of the year." Why did you make that statement? What was the reason?

Claimant: I don't know if I did it.

Referee: What is that?

Mr. Feltz: He doesn't know if he made that statement. Will you read the previous sentence before that?

Referee: You look at the whole exhibit. I'll put Exhibit 10 before Mr. Lindgren. Show him his signature on the reverse side of the page, first of all.

(Claimant examines Exhibit 10.)

Mr. Feltz: Here's Exhibit 9. Read that. The discussion of the Board of Directors.

(Claimant examines Exhibit 9.)

Referee: My question, Mr. Lindgren, is what was the reason why on December 23, 1954 you made the statement, "It may be that we will dissolve it"—meaning the corporation—"after the first of the year."?

Claimant: Because we were losing money.

Referee: Was that the only reason?

Claimant: Yes. [42]

Referee: Didn't you lose money in 1953?

Claimant: Yes.

Referee: Why didn't you consider dissolving it at the end of 1953?

Claimant: Well, because we thought it was going to get better, but it's been getting worse all the time.

Referee: Did you make any more loans to the

(Testimony of Helmer F. Lindgren.)

corporation after July, 1954? Did you make any loans in 1955?

Claimant: Not—I don't—I can't recall, but all the notes are there.

Referee: I know of four of them, three in 1953 and one in 1954. Did you lend the corporation money after July, 1954?

Claimant: No, sir.

Referee: No?

Claimant: No.

Referee: I don't have any further questions to ask of Mr. Lindgren at this time. I would like to ask Mr. Brown a question.

Mr. Feltz: May I ask Mr. Lindgren a question while we are on him?

Referee: Go ahead.

Mr. Feltz: The checks that you received from the corporation for wages, as noted on the corporation returns, was that always reported on your income tax return, Federal, for each year?

Claimant: Sure. [43]

Mr. Feltz: Did you attach the W-2 statements to those returns, those forms, small forms?

Claimant: Yes, sir.

Mr. Feltz: Were those checks paid to you by the corporation always cashed by you?

Claimant: Yes, sir.

Mr. Feltz: In other words, the corporation paid you \$3,600 in 1953. Did the corporation actually pay you in cash \$3,600?

Claimant: Yes, in checks. Yes.

(Testimony of Helmer F. Lindgren.)

Mr. Feltz: In other words, Mr. A—. What is your name?

Referee: Adelsheim.

Mr. Feltz: Mr. Adelsheim asked you how you loaned money to the corporation. Could you please explain how you loaned this additional money to the corporation, outside of the \$800 taken from your savings account; in other words, that gave rise to those notes?

Claimant: That is explained in one of the letters that you wrote.

Mr. Feltz: That is Exhibit 9. Is that correct? I think the exhibit would show that whenever the corporation needed money, you loaned money from cash you had on hand, from your own possession——

Claimant: Yes.

Mr. Feltz: ——actually made to the corporation?

Claimant: Yes.

Mr. Feltz: Have they been repaid, except that first one of \$600? [44]

Referee: The first one was \$800.

Mr. Feltz: I believe it was \$800, yes.

Claimant: Yes.

Mr. Feltz: Is there any asset of the corporation which you look to for the repayment of those notes?

Claimant: Certificates from the poultry Co-op.

Mr. Feltz: They belong to the corporation?

Claimant: Yes, sir.

Mr. Feltz: What are they valued at, at the time?

Claimant: Well——

(Testimony of Helmer F. Lindgren.)

Mr. Feltz: Have you checked the value, how much they are worth to the corporation?

Claimant: Two thousand five hundred.

Mr. Feltz: Two thousand five hundred owing to the corporation from the Co-op on these certificates?

Claimant: Yes.

Referee: When were these certificates transferred to the corporation's assets.

Claimant: As they accumulated from the——

Mr. Feltz: I think you know how this works——

Claimant: The Co-op pays dividends on the feed you buy during the year, and at the end of the year they make out certificates.

Referee: Rebates on feed?

Claimant: Yes, rebates on feed.

Referee: And what did you do with those certificates or [45] rebates when you got them?

Claimant: Kept them.

Referee: Kept them?

Claimant: Yes.

Referee: In what form did the rebate come to you? Was it in a check?

Claimant: I'll show them to you and I won't have to explain.

(Claimant hands papers to Referee.)

Mr. Brown: Those certificates, I might add, represent a dividend, or a rebate, similar to Metropolitan Life Insurance Company, on the purchases of feed. Whatever profit is made in the feed department is distributed among the people who pur-

(Testimony of Helmer F. Lindgren.)

chased feed based on the amount of feed purchased during the year.

Mr. Feltz: I would like to have those read into the record, showing the totals.

Referee: Just give me a chance.

Mr. Feltz: Okay.

Referee: You have handed me documents called "Capital Certificate, Oregon Egg Producers. They are all issued to Lindgren and Company and the date of issue is January 1. The first one is dated January 1, 1953. But, before I even read this into the record, how does it happen that it is issued to the Lindgren Company before the company was organized?

Claimant: They don't come out until April. [46]

Referee: When do they come out, did you say?

Claimant: I just got that last one, there——

Referee: The issue date is January 1, 1957. You got it when, this month?

Claimant: Yes.

Referee: How long ago?

Claimant: The last of March, a week ago.

Referee: There is one dated January 1, 1953 for \$550; one January 1, 1954 for \$320; one January 1, 1955 for \$580; one January 1, 1956 for \$500; and one January 1, 1957 for \$640.

Mr. Feltz: In other words, the value shown there, would that be the market value today if you turned them in?

Claimant: Yes, at any time.

(Testimony of Helmer F. Lindgren.)

Mr. Feltz: And you get interest at what per cent?

Claimant: Five per cent; I think all of them are five per cent.

Mr. Brown: The income from those——

Referee: Just a minute, please. According to Exhibit 29, the 1954 corporate excise tax returns show a feed rebate of \$675.57, and the certificate that you have handed me, which shows it was issued January 1, 1954 and which, presumably, came out in March, is for \$320. What is the explanation for the difference?

Claimant: The difference in cash that year?

Referee: The difference was in cash?

Claimant: Yes. [47]

Referee: You mean some of the time you get part of your rebate in certificates and part in cash?

Claimant: Yes.

Mr. Brown: True.

Referee: What determines how you will get it—certificates or cash?

Claimant: The Board of Directors would decide.

Mr. Brown: Of the Oregon Egg——

Referee: I'll hand these back to you, Mr. Feltz. Is your property owned jointly by yourself and your wife, Mr. Lindgren.

Claimant: Yes.

Mr. Feltz: Are you through with him on that? Are you still on the certificates?

Referee: No.

(Testimony of Helmer F. Lindgren.)

Mr. Feltz: I would like to go on with a few questions.

Referee: Go ahead.

Mr. Feltz: Mr. Lindgren, with respect to raising the question of your living expenses, how you and your wife had been living, during the year 1953 the returns show that the corporation paid you \$3,600, and the notes from the corporation, which you loaned money to the corporation on, are two notes of \$500 and \$600, other than the one you originally took care of out of your savings account. You loaned back \$1,100; that leaves a balance of \$2,500 cash which was available for you and your wife to live on. Did you live on this \$2,500? Can you live on \$2,500? [48]

Claimant: Easily.

Mr. Feltz: Easily? Thank you.

Referee: I would like to ask Mr. Brown a question.

Mr. Feltz: Okay.

Referee: No, I'll direct it to you, Mr. Feltz. In Exhibit 31, the names of the stockholders are Helmer Lindgren and Edith Lindgren. They received 25 shares. That seems to be inconsistent with what was said about Mr. Barker's share. What is the explanation?

Mr. Feltz: I think some of the records of the corporation might be—as at the time of your letter—showed only those two.

Mr. Brown: I can give you the explanation. When the corporation was formed, the Oregon law

(Testimony of Helmer F. Lindgren.)

required that a person be a shareholder to be a director. The legislature this year amended the law to make it no longer necessary.

Referee: Which year did the law——

Mr. Feltz: 1953.

Mr. Brown: The corporation was formed before the legislature met, and the requirement was still there, and the law didn't become effective until August, 1953. It was some later date the endorsement back was made, and I think Shirley did it before he went to Chicago.

Referee: I have no more questions, unless Mr. Lindgren or either of the witnesses have any questions to ask of each other.

Mr. Feltz: Well, I have something. I have a couple of questions, a couple of questions I want to ask. Mr. Lindgren——

Referee: Speak a little slower, please, so I can follow you. [49]

Mr. Feltz: The corporation, in the Federal income tax returns for 1953, 1954, and 1955, showed certain amounts paid to you by the corporation as wages. Did you receive these amounts as cash?

Claimant: Yes.

Mr. Feltz: Did you report this amount of wages on your income tax returns for the years 1953, 1954, and 1955 as wages from Lindgren and Company?

Claimant: Yes.

Mr. Feltz: You still have outstanding from the corporation certain notes, is that correct, from the

(Testimony of Helmer F. Lindgren.)

corporation, whatever the notes show in the record?

Claimant: Yes.

Mr. Feltz: You expect to be paid those notes from the corporation?

Claimant: Yes.

Mr. Feltz: From the certificates when they are eventually redeemed?

Claimant: Yes.

Mr. Feltz: That is all.

Referee: Any questions, Mr. Brown?

Mr. Brown: No.

Referee: Or do you have a statement?

Mr. Brown: I would like to make a statement on some of the questions Mr. Lindgren couldn't answer. Having been present at the time, I believe I can complete the record. First, on the rent, the [50] matter was discussed with Mr. Barker and myself as to the value of the land and buildings used by the corporation in connection with the business. This was the initial organization meeting, and I believe, if Mr. Lindgren thinks back, he may recall it, and it was determined they would have to pay rent, and the premises were worth between five and six thousand dollars, and the fair rent would be around \$50 a month, or thereabouts, if my information is correct, and the company didn't make any payments until 1954 or 1955, I'm not sure here without looking, but the indebtedness was acknowledged between the company and Mr. Lindgren to be an amount that would have to be

paid to him, at that time, and it was also considered that such payments should be made——

Referee: The value of the property was between five and six thousand dollars?

Mr. Brown: That's right.

Referee: Was that the fair market value or the appraised value for tax purposes?

Mr. Brown: No formal appraisal was made of it, but the fair value to determine the rent was determined to be that.

Referee: The fair market value?

Mr. Brown: Right.

Referee: Anything else?

Mr. Brown: One other point, concerning Mrs. Lindgren. I am sorry, in line of your questions, she couldn't be here today, but I think if you could physically see her, the testimony of Mr. Lindgren regarding her ability to perform work in these later years would be [51] substantiated because she is obviously unable, and has been unable, to render any substantial services after that date. Whether you are familiar with farming operations, I don't know. I returned from Redmond yesterday and as a typical farm wife, well, there were two injuries, there, in the insurance company, neither related to the employer, so it is quite common for the wife, where only the husband is employed, here in this area, to actually do some assistance when the husband isn't home.

Referee: There was an objection to my question, but Exhibit 4 is based upon information which

Mr. Lindgren, himself, supplied. It is true he didn't sign it, but, as I said, there is a presumption that the interview was correctly recorded. And that says that as of December, 1952 they were spending about an equal amount of time. Whether that is right or not, whether he understood what was being asked, may be in question. At that time he supplied the information upon which I based my question.

Mr. Brown: I was only attempting to explain that Mrs. Lindgren's value to the corporation or to its operation could only be nominal because of her physical incapacity to do any more than a very nominal amount of work in an emergency, knowing Mrs. Lindgren and knowing her physical condition in the first part of 1953. I believe the record—I'm not sure that it's clear that Snow-Williams Corporation was in existence in 1952.

Referee: That is shown.

Mr. Brown: And the discussion in the organizational meeting which was held in January—the completion of the transaction by name, [52] necessary to transfer, wasn't done until February, but it was agreed, I believe in January, 1953, that the corporation would take over the business as soon as the necessary formalities were completed. I thought that explanation might help clear the question asked Mr. Lindgren.

The Referee: According to Exhibit 29, I'm looking at the Supplemental Articles of Incorporation

of Snow-Williams Motors, Incorporated, shows there was a meeting on January 27, 1953.

Mr. Brown: That meeting would have been held on that date, but the meeting with me which led to this meeting would have been held prior to January 27. I want to clear the record on that, for whatever value it may have in reaching your determination. This was another corporation which we had in the office, which was inactive, and that saved a first filing fee, and that is the reason that it was used. It took me a few days to clear with the initial incorporators to use that corporation. I wanted to clear that they intended using the corporation from the first of the year.

Referee: I want to ask something else. Yesterday I spoke to Mr. Feltz on the telephone, Mr. Lindgren, and asked if we could have at the hearing the banking records, so far as your savings account is concerned. He said you didn't have a telephone and he couldn't reach you. Could those be supplied to me so I could examine——

Claimant: Sure.

Referee: You have a pass book for your savings account?

Claimant: Yes, sir.

Referee: Is the pass book you have now the one you had [53] in 1953?

Claimant: Yes, sir.

Referee: The same pass book?

Claimant: Yes, sir.

Referee: Could you make that available to me?

(Testimony of Helmer F. Lindgren.)

Claimant: I could bring it in.

Referee: Would there be any objection by anyone to my examining that and making whatever portions of it I think pertinent a part of the record.

Mr. Feltz: No objection.

Referee: I would simply reopen the record and read into it whatever the entries that would seem pertinent might show. Is that agreeable?

Mr. Feltz: Agreeable.

Referee: Could you bring it or send it——

Mr. Feltz: You bring it to the office and I'll look at it and then bring it down.

Referee: Can you do that this week?

Mr. Brown: Why don't you bring it today, late this afternoon, and get all the record made up?

Mr. Feltz: I'll bring it today or tomorrow.

Referee: This afternoon would be better. I have other commitments tomorrow.

Mr. Feltz: This afternoon.

Referee: Is there anything more of an evidentiary nature [54] that you want to bring to my attention?

Mr. Feltz: I don't think so.

Referee: Do you wish to make an oral argument?

Mr. Feltz: I would like to make a brief——

Referee: I'm sorry, there is one other thing. Do you have the records of the checking account of the corporation with you?

Mr. Feltz: No. No, Mr. Lindgren just brought with him the checks which you have received,

(Testimony of Helmer F. Lindgren.)

which you already have.

Claimant: That have been examined.

Mr. Feltz: He hasn't seen them.

Claimant: Isn't there a record of it?

Mr. Feltz: I guess they just made photostats of your salary checks, not of the rest.

Referee: Just the salary checks.

Mr. Feltz: Not showing, like the payment of feed and things like that.

Referee: Do you have your monthly statements from the corporation's savings account starting in——

Claimant: Checking account.

Referee: I'm sorry, checking account, starting with February, 1953?

Claimant: Sure.

Referee: Can you make those available?

Claimant: Sure.

Referee: Would you bring those to your attorney? [55]

Claimant: Yes, sir.

Referee: Would it be agreeable to you, Mr. Feltz, if I reopened the record to include in addition to the portions of the savings account the record of the checking account as well?

Mr. Feltz: No objection.

Claimant: Do you want the statements?

Referee: I would like to see the statements.

Claimant: Up to date?

Referee: Up to date if you have them.

Claimant: I have everything.

Referee: Starting with January or February, 1953. All right, Mr. Feltz, go ahead.

Mr. Feltz: The record shows from the evidence introduced here that the corporation, Lindgren and Company, paid to Mr. Lindgren as wages the sum of \$3,600 in 1953, \$2,925 in 1954, and eleven hundred twenty-five in 1955. Mr. Lindgren has testified, and the record shows from what he has introduced in checks, that Mr. Lindgren was paid this amount in cash, and that during the year 1953 he loaned to the corporation to help it through it's first initial year, \$1,100, from other cash on hand that he had. The original investment of \$800 was from his savings account, so that there was only \$1,100 loaned to the corporation in 1953. In 1954 the record shows from the notes on hand that this taxpayer, Mr. Lindgren, received \$2,925 cash from the corporation as wages, and loaned to the corporation in that year \$1,000. Now, we feel at a loss to understand how the Social Security Administration in its determination [56] finds that Mr. Lindgren received no taxable wages in the years 1953 or 1954, but only repayments of loans. The loans are shown to be \$1,100 in one year and \$1,000 in another year, and that except in the first quarter of 1954 he received no taxable wages. The record definitely shows he was paid wages subject to social security, and that he has treated the corporation as entirely separate from himself, and has loaned money to the corporation, of which he has loans outstanding which will be paid from certificates

of the Oregon Egg Producers, noted in the record herein. Whereas, we believe that the record definitely shows that the taxpayer is entitled to social security benefits on the basis of wages paid to him during the years 1953 and 1954; also, there is no disagreement between the taxpayer and the Government with respect to the purpose of establishing this corporation. He directly testified that the corporation was established in order to obtain the benefits of social security, and there is no law against it.

Referee: There is nothing improper in that.

Mr. Feltz: No law against it. The only question is the determination by the Social Security Administration that he did not receive wages from the corporation. I think the record and evidence shows he did receive wages and loaned back certain amounts of money, \$1,100 in one year and \$1,000 in another year, to help the corporation through the early years, but that money will be repaid to him and is secured by several certificates of Oregon Egg.

Referee: In your argument you emphasize that he is entitled to benefits based upon the wages paid in 1953 and 1954. In the issue which I stated orally as the issue which was before me for decision, [57] as well as in the Notice of Hearing, a copy of which was sent to you two attorneys, I indicated that the fact issue concerned whether remuneration reported for the claimant by Lindgren and Company, Incorporated, commencing January, 1953 constituted wages under section 209 of the Social Security Act

I'm going to amend, if it is agreeable to you, I'm going to amend the factual matters upon which the general issue will depend. I'm going to limit it to the years 1953 and 1954.

Mr. Feltz: I think it would be, the benefits would be, based upon those years.

Referee: Is it agreeable to you if no findings are made with respect to 1955?

Mr. Brown: (Nodded affirmatively.)

Referee: Your answer is "Yes"?

Mr. Brown: Yes, that's correct.

Referee: It is understood that even though my notice indicated that I would consider remuneration commencing with January, 1953, and although I earlier indicated in my oral statement of the issue that the fact upon which the general issue would depend would be unlimited as to years, it is now agreed that that is amended and I will limit my findings of fact to 1953 and 1954?

Mr. Feltz: The evidence you have, or exhibits, will remain part of the record?

Referee: That will remain part of the record. One reason I am doing that is, as you, first of all, correctly pointed out, if he is entitled to benefits it would be upon the two years and, under [58] the applicable provisions with regard to computation of benefits, the low year 1955 would be stricken anyway.

Mr. Feltz: The low year——

Referee: The low year 1955, that is. Also, the documentary evidence is more complete with respect to 1953 and 1954 than with respect to 1955. Those

are my reasons for limiting this decision to 1953 and 1954. You understand——

Mr. Feltz: Yes.

Referee: I take it that is agreeable with you.

Mr. Feltz: Yes.

Mr. Brown: Correct.

Referee: Anything further you want to submit to me, other than the monthly statements of the corporation's checking account and the pass book which is evidence of Mr. Lindgren's personal savings account. Is there anything in addition by way of factual information or argument?

Mr. Brown: There is only one point I might ask you. Is there any question in your mind as to the negotiability of these certificates from the Co-op, of their being worth, and readily negotiable, at 100 cents on the dollar?

Referee: I have no question about that. I don't know anything about the Oregon Egg Producers or about the marketability of its certificates but——

Mr. Feltz: He has testified——

Mr. Brown: He did testify, did he not—— [59]

Referee: There is testimony in the record that they are negotiable at face value, and——

Mr. Brown: I would like my testimony to be that, too, since I do work for them and am there and I know——

Referee: I'll accept your testimony.

Mr. Brown: I think it might be relevant in your finding as to the corporation's ability to repay these notes.

Referee: Anything further?

Mr. Feltz: No.

Mr. Brown: Not that I can think of.

Referee: Have you had a fair opportunity to present testimony and arguments today?

Mr. Feltz: We have.

Mr. Brown: We have.

Referee: The record will be held open, if I consider it necessary, to incorporate into the record information from the bank records, but, apart from that, the record is closed.

Mr. Feltz: If you do incorporate anything from those records, we would like to reserve comments.

Referee: You would like to see what is incorporated?

Mr. Feltz: I have never seen some of them.

Referee: Do you want to be present when I reopen the record to read into the record those entries which I consider pertinent; is that your point?

Mr. Feltz: After I see the things, it might be better—— [60]

Referee: After the banking records have been examined by you, you will pass them on to me?

Mr. Feltz: I will bring them down personally.

Referee: This afternoon?

Mr. Feltz: Yes.

Referee: The hearing is now closed.

Hearing closed: 11:45 a.m.

Hearing Reopened

Referee: Let the record show that the record has been reopened at 3:45 p.m., April 3, 1957, and that Mr. Feltz is here with the bank records which

were requested this morning, and which it was agreed would be produced. I have been handed a pass book for a savings account, the joint account of Edith or H. Lindgren. The first entry is March 20, 1942, First National Bank of Portland, and the most recent entry is January 23, 1956. I will read the transactions, that is, the withdrawals, deposits, and balance. I'll start with October 8, 1952, the date, \$109.85, balance—do you want to look on with me to see if this is accurate—\$1,016.60.

Mr. Feltz: No, that's all right.

Referee: October 16, 1952, withdrawal, \$110—I think I'll have these itemized in columns: date, deposit, withdrawal, interest, balance: [61]

Date	Deposit	Withdrawal	Interest	Balance
10/16/52		\$110.00		\$ 906.16
2/13/53		800.00		106.16
12/31/52			\$9.06	115.32
6/30/53			1.15	116.37
12/31/53			1.16	117.53
6/30/54			1.18	118.71
12/31/54			1.19	119.90
1/15/55	\$ 500.22			620.12
2/11/55		100.00		520.12
3/ 8/55		50.00		470.12
4/26/55	2,000.00			2,470.12
5/23/55		100.00		2,370.12
6/30/55			2.95	2,373.07

October 10—do you have enough time for this?

Mr. Feltz: How many more are there there?

Referee: I think that's sufficient for this account. Let it be shown that I'm not going to read the entries all the way down to January 23, 1956. It covers the period with which we are concerned. Now, I have been handed a pass book for another savings account, this one with the United States National Bank of Portland for H. or Mrs. Edith Lindgren. The initial entry is May 24, 1943. As of December 12, 1952, there is a balance of \$1,930.24. I'll do this the same way:

Date	Deposit	Withdrawal	Interest	Balance
12/31/52			\$20.30	\$1,950.54
6/30/53			19.50	1,970.04
11/13/53		\$500.00		1,470.04
12/31/53			17.20	1,487.24
6/21/54		200.00		1,287.24
6/30/54			14.87	1,302.11
7/28/54		500.00		802.11
12/31/54			8.02	810.13
6/30/55			8.10	818.23

That is as far as I need to go.

Mr. Feltz: Do you want to say in that last one—did you [62] get that \$2,000 deposit on the record? If you want an explanation of that, that is the sale of real property for \$2,000, if there is any question on that.

Referee: You have handed me an earnest money receipt dated April 20, 1955, and it shows earnest money contract \$2,000 for the sale of certain real property in Clackamas County, the total sale price

to be \$2,000. I'll hand the earnest money receipt back to you, and the pass books which you have handed me. Any other savings account?

Mr. Feltz: Yes, that's (pointing) the last one.

Referee: This one is a third pass book and the name of the owner of the account is not shown on the pass book. Mr. Lindgren presented this to you, did he?

Mr. Feltz: Yes, it belongs to him.

Referee: He said he had three savings accounts. Is——

Mr. Feltz: Three savings accounts?

Referee: He said that today, I believe.

Mr. Feltz: At least, that is what he turned over to me.

Referee: This is with the First National Bank of Portland. It was opened on October 15, 1942. As of March 3, 1952, there was a balance of \$1,591.61. Thereafter, there are nine transactions involving posting of interest to the account. I will not read those into the record. There are no deposits. There were three withdrawals—April 20, 1954, \$1,000, leaving a balance at that time of \$646.22; November 4, 1956, \$400, leaving a balance of \$294.88; November 5, 1956, same date, a withdrawal of \$294.88, leaving a balance of zero. [63]

Mr. Feltz: The explanation on the \$1,000 withdrawal was to buy chinchillas, not money deposited in the corporation. These take care of all the savings accounts. Here, I'll hand you herewith all the bank statements and the initial——

Referee: If I understand it correctly, there's

only one; the corporation has only had one bank account, a checking account?

Mr. Feltz: Checking account.

Referee: With the First National Bank of Portland?

Mr. Feltz: That is correct.

Referee: You have handed me a bank book which is for the credit of Lindberg and Company, the southeast branch, incidentally, of the bank. It shows, this pass book shows, only two entries: February 13, 1953, deposit \$800; February 18, 1953, deposit, \$461.09.

Mr. Feltz: That is correct. The remainder of his deposits were made through slips later. The only checks that would be missing from there (pointing to a sheaf of papers) would be the ones we pulled out for the wages.

Referee: I'm not going to read these into the record. I see what they are. They are monthly statements. I have examined only the ones—I have been handed a sheaf of monthly statements, the cancelled checks attached, showing in detail the deposits, the dates of the transactions, and the balances. I have examined the ones for March, April, and May, 1953. The one for March, the first transaction, shows a balance on February 25, 1953 of \$1,341.04. I should say, for the record, that all of the checks I have examined for March, April, May, and June are [64] made out to Lindgren and Company and signed by Edith Lindgren. I'll show you a check dated April 23, 1953 made out to the

Director of Internal Revenue. Is that for personal income tax returns?

Mr. Feltz: I think it would be for Federal withholding, and social security.

Referee: Federal withholding?

Mr. Feltz: I think he was withholding on his—let's see, it would be \$900. That would be about 20 percent of \$900, \$140.40; if we had a Federal withholding report, I think you would find it. That's supposed to be the amount withheld.

Referee: A quarterly report of withholding, is that what you mean?

Mr. Feltz: Is that in April?

Referee: Yes.

Mr. Feltz: Yes, filed in March and paid in April.

Referee: Now, according to Exhibit 21, the salary check dated March 31, 19—wait a minute, I—

Mr. Feltz: It would be dated in March, I believe.

Referee: Dated March 30, 1953, shows withholding of Federal withholding tax of \$113.40, as shown by Exhibit 21. Why would the check be for \$140.40? This is a check dated April 23, 19—

Mr. Feltz: Add \$113.40 and add \$13.50. It ties in. Makes \$140.40. This is the amount of withholding; the employer pays the other.

Referee: The social security tax should be doubled; is that your point? [65]

Mr. Feltz: Yes.

Referee: I may get these (pointing to papers) all mixed up; I hope that doesn't matter.

Mr. Feltz: I don't believe so.

Referee: Do you have the salary check, the original check, for September 30, 1953?

Mr. Feltz: Yes.

Referee: May I see it please?

(Mr. Feltz hands check to referee.)

Referee: What is this perforation, it's—the late——

Mr. Feltz: November 1, 1953.

Referee: Thank you; that is the original of a check, a photostatic copy of which is included in Exhibit 21. I want the record to show that I have examined the monthly statements for the account of Lindgren and Company commencing with the first one, which started with February, 1953, through December, 1954. There have been presented to me bank statements for each of the months in that period, and I think, with each, there has also been presented cancelled checks which compare exactly with the checks in detail as listed on each monthly bank statement, with the exception of the fact that salary checks issued in 1953 and 1954, as shown by Exhibit 21, the original of those checks are not included. They are here with you, are they not, Mr. Feltz?

Mr. Feltz: Yes.

Referee: I don't need them. That is the reason those checks are not included, but, except for those, all of the other checks [66] are shown to be included in the bank statements and cancelled checks which have been presented to me for

the two years in question, 1953 and 1954. I'm not going on into 1955. I may have gotten them all mixed up; in that case, I apologize.

Mr. Feltz: That's all right. 1956 and 1957 are here.

Referee: I am not going to read them in since the question is limited to 1953 and 1954, in accordance with our discussion this morning.

Mr. Feltz: Okay.

Referee: Receipts for deposits have also been presented to me for the years in question. I'm not going to check these as against the deposits shown on the monthly bank statements. I'll hand these deposit slips back to you. (Referee hands papers to Mr. Feltz.)

Mr. Feltz: Thank you.

Referee: This is for 1955; I'll hand that back to you also. I believe that does it. I appreciate your coming in.

Mr. Feltz: How long do you think it will be before you have that determination, approximately how long does it usually take?

Referee: Possibly next week, or the week after.

Mr. Feltz: That will be fine.

Referee: I think I can proceed to decision pretty quickly.

Mr. Feltz: Thank you.

Referee: The reopened hearing is now closed.
4:20 p.m. [67]

Certification

We have read the foregoing transcript and

hereby certify it is a true and accurate record of the testimony taken at the hearing.

/s/ EDWARD K. ADELSHEIM,
Referee.

/s/ ADELE L. KELLAR,
Reporter.

* * * *

EXHIBIT No. 25

1000 Portland, Oregon, July 1st, 1954

Lindgren & Co. after date, without grace on demand, promise to pay to the order of H. Lindgren, at 7921 S.E. King Rd., Portland 22, Oregon, one thousand dollars in lawful money of the United States of America of the present standard value, with interest thereon in like lawful money, at the rate of 2 per cent, per annual from July 1st, 1954 until paid for value received, interest to be paid per annual and if not so paid the whole sum of both principal and interest to become immediately due, and collectible at the option of the holder of this Note. And in case suit or action is instituted to collect this Note, or any portion thereof, promise and agree to pay in addition to the costs and disbursements provided by statute, such additional sum in like lawful money as the Court may adjudge reasonable as Attorney's fees to be allowed in said suit or action.

Due, 19.....

/s/ H. LINDGREN,
/s/ EDITH LINDGREN.

mand, promise to pay to the order of H. Lindgren, at 7921 S.E. King Rd., Portland 22, Oregon, eight hundred dollars in lawful money of the United States of America of the present standard value, with interest thereon in like lawful money, at the rate of 2 per cent, per annual from Feb. 13, 1953, until paid for value received, interest to be paid per annual and if not so paid the whole sum of both principal and interest to become immediately due, and collectible at the option of the holder of this Note. And in case suit or action is instituted to collect this Note, or any portion thereof, we promise and agree to pay in addition to the costs and disbursements provided by statute, such additional sum in like lawful money as the Court may adjudge reasonable as Attorney's fees to be allowed in said suit or action.

Due, 19.....

/s/ H. LINDGREN,

/s/ EDITH LINDGREN.

[Written across face of note: \$600 paid
12/31/55. H. Lindgren.]

I certify that this is a true and exact copy of the original.

/s/ HERMAN M. JOHNSON,

Assistant Claim Supervisor, Portland, Oregon

5/7/57.

W. E. states that the \$600 paid on this note is all that the corporation has been able to repay him on these notes to date.—HMJ.

STATE OF OREGON

Excise Tax Return

For Calendar Year 1954

EXHIBIT No. 29

1954 to 1955

with the STATE TAX
 OF OREGON, ORIGIN, on or
 before the fifteenth day
 of the month following the close of
 the year, corporations authorized to do
 so must pay a minimum ex-
 cess of \$100 in if the return shows a net
 loss, and will be assessed on re-
 turn due date.

PRINT PLAINLY CORPORATION'S NAME AND BUSINESS ADDRESS

LYNDGREN AND COMPANY

7921 SOUTHEAST KINGS ROAD

PORTLAND, OREGON

1954

(Do not write here)

Ck

Ca

MO

Incorporation 1952 Under laws of what state Oregon Kind of business Calabash Growing
 with books are on cash or accrual basis Cash Have Forms 96 and 99 been filed? (See instructions) Yes
 consolidated return of two or more corporations? No If so, state how many One

GROSS INCOME

From Trading or Manufacturing, Less Returns and Allowances 9,434 99

Goods Sold:

Inventory at beginning of year	None	
Merchandise bought for sale	Food	6,126 74
Cost of manufacturing (From Schedule A)		
Total lines (a), (b), and (c)		6,126 74
Inventory at end of year	None	
		6,126 74

Profit from Trading or Manufacturing (Item 1 minus Item 2) 3,308 25

Profit from other than Trading or Manufacturing (State source)

Bank Deposits, Loans, Notes, Mortgages, Corporation Bonds, etc. 43 90

Bonds or other obligations of a State, County, or Municipality

Obligations of the United States

Dividends on Sale of Real Estate, Stocks, Bonds, other Assets (Schedule B)

Dividend Stock of Resident and Nonresident Corporations (Schedule F)

Other (State nature of income)

TOTAL INCOME (Sum of Items 1 to 12, inclusive) 3,352 35

DEDUCTIONS

Compensation of Officers (From Schedule C) 2,925 00

Depreciation on Business Property

(From Schedule D)

Interest on Schedule E) 68 30

Expenses incurred in Business (Submit Schedule)

Depreciation (From Schedule G)

Depreciation (from exhaustion, wear, tear, obsolescence) (From Schedule H) 20 00

Depletion of Mines, Oil and Gas Wells, Timber, etc. (Submit Schedule)

Other Deductions (Explain below) 375 84

Salaries and wages (Not included in Items 1, 14, or 16 above)

TOTAL DEDUCTIONS (Sum of Items 14 to 22, inclusive) 3,389 34

NET INCOME (From 13 minus Item 24) (35 99)

COMPUTATION OF TAX

Tax (Item 25 above, or allocation to Oregon from Schedule J) (35 99)

Tax (8% of Item 26)

Oregon Personal Property Taxes (Not to exceed 50% of Item 27)

State Tax (Item 27 minus Item 28) (Not Less Than \$10. See Instructions) 10 00

SCHEDULE J—ALLOCATION OF INCOME

To be completed by every corporation doing business both within and without the state

	In Oregon	Everywhere	Per Cent in Oregon
1. Average value of tangible property used in the business at beginning and end of year			
2. Wages, salaries, and other compensation of employees			
3. Sales, less returns and allowances (See Instruction 21)			
4. Total Per Cent (Sum of the percentages above)			
5. Average Per Cent (1/2 of Item 4)			
6. Net income from business both within and without the state (See Instruction 27)			
7. (a) Oregon personal property taxes (in Item 9, Schedule L)			
8. (b) Nonapportionable income (See Instruction 27)			
9. Total net income subject to allocation (Item 6 minus Item 7)			
10. Oregon allocation (Item 9 multiplied by Item 5)			
11. (a) Oregon personal property taxes (Item 7 (a) above)			
12. (b) Nonapportionable income assignable to Oregon			
13. Adjusted Oregon net income (Item 10 plus Item 12—Carry to line 26, page 1)			

SCHEDULE K—BALANCE SHEET

ITEMS	BEGINNING OF INCOME PERIOD		END OF INCOME PERIOD	
	Amount	Total	Amount	Total
ASSETS				
1. Cash				
2. Notes Receivable				
3. Accounts Receivable				
Less reserve for bad debts				
4. Inventories				
Raw materials				
Work in process				
Finished goods				
Supplies				
5. Investments (describe fully):				
Stock Shares—Alcoa				
Other Assets - Goodwill	800 00	800 00	800 00	800 00
6. Deferred charges:				
Prepaid Insurance				
Prepaid taxes				
7. Physical assets:				
Land				
Buildings				
Machinery and equipment	200 00		200 00	
Furniture and fixtures				
Delivery equipment				
	200 00		200 00	
Depreciation and depletion res.	140 00	60 00	160 00	40 00
8. Other assets (describe fully):				
TOTAL ASSETS		860 00		840 00
LIABILITIES AND CAPITAL				
9. Notes payable				
10. Accounts payable				
11. Accrued expenses (describe fully):				
12. Other liabilities (describe fully):				
Due Officers		4 17		30 16
13. Capital Stock:				
Preferred (new stock in treasury)	2,500 00	2,500 00	2,500 00	2,500 00
Common (new stock in treasury)				
14. Surplus		(2,644 17)		(2,690 16)
15. Divided profits				
TOTAL LIABILITIES AND CAPITAL		860 00		840 00

EXHIBIT No. 29

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SCHEDULE 1 RECONCILIATION OF NET INCOME AND ANALYSIS OF CHANGES IN SURPLUS Page 3

and undivided profits as shown by balance sheet at beginning of period	1/1/34	(2,644.17)
Income from Item 23, page 1 of this return		(33.99)
Net taxable income (itemization required)	None	None
Charges against reserves for bad debts if Item 20, page 1 of this return is in addition to a reserve	None	None
Charges against reserves for contingencies, etc. (itemization required)	None	None
Credits to surplus (itemization required)	None	None
TOTAL OF LINES 1 TO 8		(1,680.16)

Dividends paid during period (State if cash, stock or other property)	None	None
State(s) paid Character	None	None
State(s) paid Character	None	None
Allowable deductions	10.00	
Region excise tax		
Federal income and excess-profits taxes		
Taxes on, or measured by, income, paid to other states		
Region personal property tax		
Improvement taxes tending to increase the value of the property assessed		
Depreciation, fixtures, additions, or betterments shown as expense on the books		
Replacements and renewals		
Insurance premiums on life of any officer or employee where corporation is directly or indirectly a beneficiary		
Additions to bad debt reserves not included in Item 20, page 1		
Other unallowable deductions		10.00
Debits to surplus (to be detailed)	None	None
TOTAL OF LINES 9 TO 10		10.00
NET SURPLUS AND UNDIVIDED PROFITS AS SHOWN BY BALANCE SHEET (Line 7 minus line 11)		(1,690.16)

A. M—RECONCILIATION: DEPRECIATION RESERVE

Reserve at beginning of period	140.00
Depreciation expense during period	20.00
Other adjustments (Detail)	
Reserve at end of period	160.00

SCH. D.—RECONCILIATION: BAD DEBT RESERVE

1. Reserve at beginning of period	
2. Additions to reserve during period	CASH BASIS
3. Other credits (Detail)	
4. TOTAL OF LINES 1 TO 3	
5. Charges against reserve during period	
6. Other debits (Detail)	
7. TOTAL OF LINES 5 AND 6	
8. Reserve at end of period (line 4 minus line 7)	

AFFILIATIONS WITH OTHER CORPORATIONS

The following questions must be answered:

1. Does the corporation own directly or control through closely affiliated interests or by a nominee or nominees 85% or more of the voting capital stock of another corporation or of other corporations? **No**

2. Is 85% or more of your outstanding voting capital stock owned by another corporation or by two or more affiliated corporations, or more of your outstanding voting capital stock as well as 85%, or more of the outstanding voting capital stock of another corporation or of other corporations owned or controlled by the same individual or partnership or by the same individuals in partnership? **No**

Answer to questions 1, 2 and 3 or to any of them is "yes", list names of corporations: _____

3. Has the corporation filed a consolidated return for the preceding taxable year? **No**

4. Has the corporation filed a return under the same name for the preceding taxable year? **Yes**

5. Has the corporation in any way an outgrowth, result, continuation or reorganization of a business or businesses in existence during this or any prior year since December 31, 1929? **Yes**

6. If "yes", give name and address of each predecessor's business and the date of the change in entity: **Sam Williams Notup Co.**

7. Were any asset values increased or decreased? **None**

8. Were inventories valued at cost or cost or market whichever is lower? If other basis was used, state why used and give date inventory was last reconciled with stock: **None**

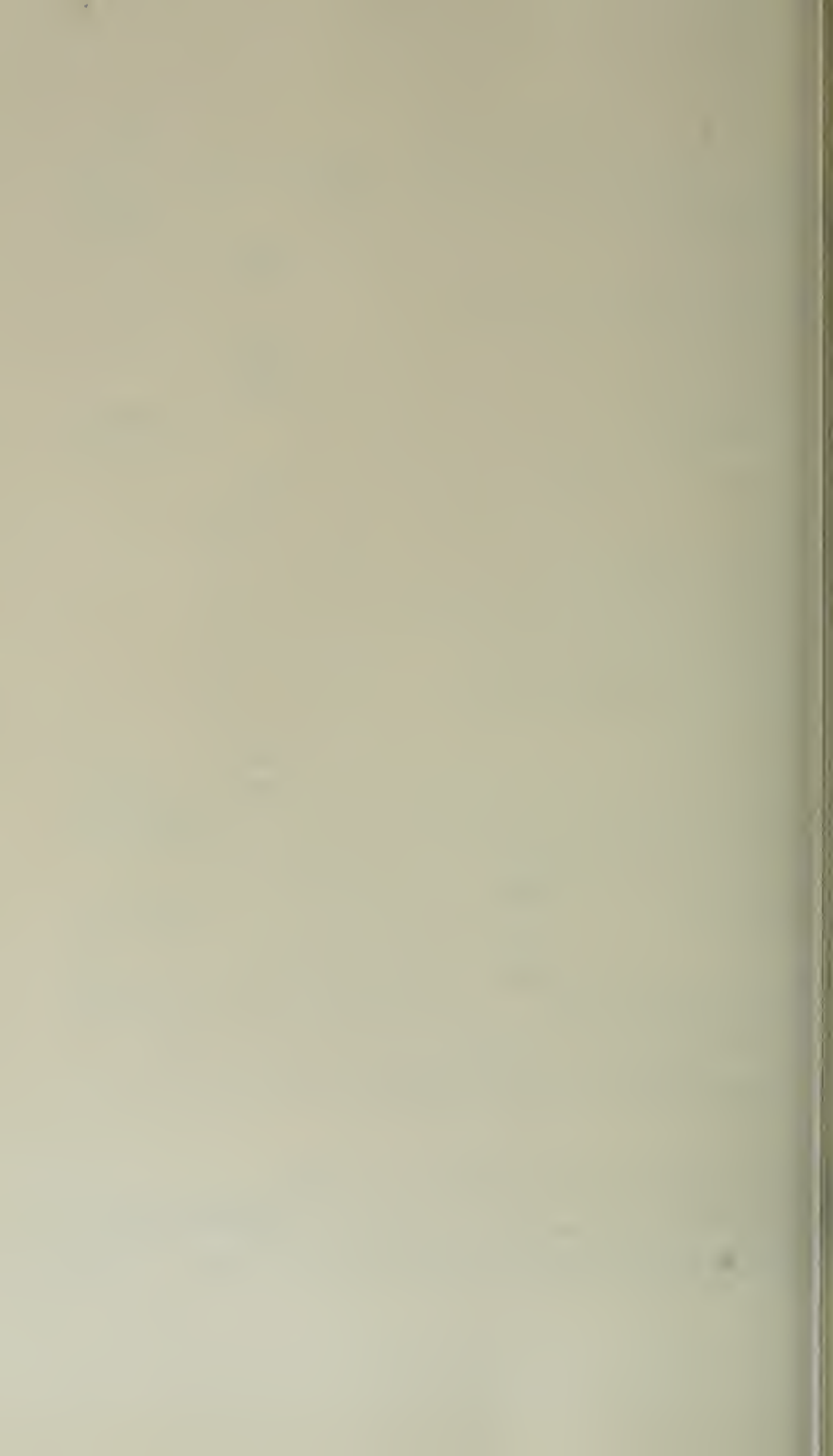


Exhibit No. 29—(Continued)

MODULE A—COST OF MANUFACTURING OR PRODUCING GOODS

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Page 4

Item	Amount	Item	Amount
and wages			
and supplies			

SEE SCHEDULE 1

SCHEDULE B—PROFIT OR LOSS FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC.

Kind of Property	1. Date		2. Gross Sales Price	3. Depreciation Allowable Since Acquisition	4. Cost	5. Value as of Jan. 1, 1929	6. Subsequent Improvements	7. Net Profit or Loss (Enter as Item 10)
	Acquired	Sold						

NONE

Property was acquired

SCHEDULE C—COMPENSATION OF OFFICERS

1. Name of Officer	2. Title	3. Time of Business	4. Shares owned		5. Compensation (Enter as Item 14)
			Common	Preferred	
Wm. F. Lindgren	President	All	500		2,925.00

SCHEDULE D—COST OF REPAIRS

1. Items	2. Amount (Enter as Item 16)
Salaries and wages	

NONE

SCHEDULE E—TAXES

1. Items (See Instruction 18)	2. Amount (Enter as Item 18)

SEE SCHEDULE 1

SCHEDULE F—DIVIDENDS RECEIVED

1. Name of Corporation	2. Amount Received

NONE

SCHEDULE G—BAD DEBTS

1. Sales on Account	2. Bad Debts

CASH SALES

SCHEDULE H—OREGON PERSONAL PROPERTY TAXES PAID (The tax must actually be paid. No accrual allowed).—See Instruction 26

1. County	2. Year of Assessment	3. Date Paid	4. Amount

NONE

SCHEDULE I—EXPLANATION OF DEDUCTION FOR DEPRECIATION

1. Kind of Property (Indicate year materials of which constructed)	2. Date Acquired	3. Age when Acquired	4. Probable Life After Acquisition	5. Cost (Exclusive of Land)	Amount of Depreciation Charged Off	
					6. Previous Year	7. This Year
Boarder House	1955	Old	10 Yrs.	200.00	140.00	20.00

Under the penalties for false swearing that this return (and any accompanying schedules and statements) has been prepared by me and, to the best of my knowledge and belief, it is a true and complete return.

Signature
Title

President

Date April 15, 1955

Exhibit No. 29—(Continued)

LINDGREN AND COMPANY1954SCHEDULE 1Income

Fryer Sales	\$ 7,950.63
Meat Sales	643.09
Egg Sales	8.53
Sack Sales	158.72
Feed Rebate	<u>675.57</u>
Total	<u>\$ 1,436.52</u>

Other Deductions

Briquets	\$ 22.40
Chickens	16.00
Hay	175.68
Electricity	122.76
Calves	<u>39.00</u>
Total	<u>\$ 375.84</u>

Taxes

Social Security	\$ 58.50
Corporation License	<u>10.00</u>
Total	<u>\$ 68.50</u>

STATE OF OREGON

Corporation Excise Tax Return

For Calendar Year 1953

Exhibit No. 29—(Continued)

Year From 1953 to 1954

Return with the STATE TAX
RETURN, SALEM, OREGON, on or
before the fifteenth day
of April in 1954. Fiscal year returns
must be filed on or before the fifteenth day
of the month following the close of
the year. Corporations authorized to do
business must pay a minimum excise
tax of \$10 even if the return shows a net

and interest will be assessed on re-
turn after the due date.

PRINT PLAINLY CORPORATION'S NAME AND BUSINESS ADDRESS

LINDGREN AND COMPANY

7921 SOUTHEAST KINGS ROAD

PORTLAND, OREGON

1953

(Do not write here)

Clk

Cs

MO

Incorporation 1952 Under laws of what state Oregon Kind of business Chicken Growing
Whether books are on cash or accrual basis Cash Have Forms 96 and 99 been filed? (See instructions) Yes
Is consolidated return of two or more corporations? No If so, state how many One

GROSS INCOME	See Schedule 1	
(a) Sales from Trading or Manufacturing, Less Returns and Allowances		9,147 42
(b) Cost of Goods Sold		
(Inventory at beginning of year)		
(Merchandise bought for sale—Food)	6,877 73	
(Cost of manufacturing (From Schedule A))		
(Total of lines (a), (b), and (c))	6,877 73	
(Less inventory at end of year)		6,877 73
(d) Profit from Trading or Manufacturing (Item 1 minus Item 3)		2,269 69
(e) Profit from other than Trading or Manufacturing (State source)		
(Interest on Bank Deposits, Loans, Notes, Mortgages, Corporation Bonds, etc.)		27 50
(Interest on Bonds or other obligations of a State, County, or Municipality)		
(Interest on Obligations of the United States)		
Rents		
Royalties		
(Gain or Loss on Sale of Real Estate, Stocks, Bonds, other Assets (Schedule B))		
(Dividends on Stock of Resident and Nonresident Corporations (Schedule F))		
(Other Income (State nature of income)—Food Rebate)		556 73
TOTAL INCOME (Sum of Items 1 to 12 inclusive)		2,893 94

DEDUCTIONS		
(Compensation of Officers (From Schedule C))		3,600 00
(Depreciation on Business Property)		
(Rents (From Schedule D))		
(Interest)		
(Taxes (From Schedule E)) See Schedule 1		64 00
(Losses incurred in Business (Submit Schedule))		
(Depreciable (From Schedule G))		
(Depreciation (from exhaustion, wear, tear, obsolescence) (From Schedule I))		20 00
(Depletion of Mines, Oil and Gas Wells, Timber, etc. (Submit Schedule))		
(Other Deductions (Explain below)) See Schedule 1		814 11
(Salaries and wages (Not included in Items 1, 16 or 18 above))		
TOTAL DEDUCTIONS (Sum of Items 16 to 22 inclusive)		4,508 11
NET INCOME (Item 13 minus Item 24)		6,385 83

COMPUTATION OF TAX

(Income (Item 25 above, or allocation to Oregon from Schedule J))	(1,644 17)
(Excise Tax (8% of Item 26))	None
(Tax for Oregon Personal Property Taxes (Not to exceed 50% of Item 27))	
(Miscellaneous Tax (Item 27 minus Item 28) (Not Less Than \$10. See Instructions))	10 00

SCHEDULE J—ALLOCATION OF INCOME

To be completed by every corporation doing business both within and without the state

	In Oregon	Everywhere	Per Cent in Oregon
Average value of tangible property used in the business at beginning and end of year			
Wages, salaries, and other compensation of employees			
Gross sales, less returns and allowances (See Instruction 20)			
Total Per Cent (Sum of the percentages above)			
Average Per Cent (1/2 of Item 6)			
Net income from business both within and without the state (See Instruction 27)			
Less (a) Oregon personal property taxes (in Item 8 Schedule L)			
(b) Nonapportionable income (See Instruction 27)			
Total net income subject to allocation (Item 8 minus Item 7)			
Oregon allocation (Item 8 multiplied by Item 6)			
Add (a) Oregon personal property taxes (Item 7 (a) above)			
(b) Nonapportionable income assignable to Oregon			
Adjusted Oregon net income (Item 9 plus Item 10—Carry to line 20 page 1)			

SCHEDULE K—BALANCE SHEET

ITEMS	BEGINNING OF INCOME PERIOD		END OF INCOME PERIOD	
	Amount	1/1/53	Amount	12/31/53
ASSETS				
Cash				
Notes Receivable				
Accounts Receivable				
Less reserve for bad debts				
Prepaid expenses				
Raw materials				
Work in process				
Finished goods				
Supplies				
Investments—debt security				
Stock Subscriptions	2,500.00			
Other Assets - Goodwill		2,500.00	800.00	800.00
Deferred charges				
Prepaid insurance				
Prepaid taxes				
Capital assets				
Land				
Buildings				
Machinery and equipment			200.00	
Furniture and fixtures				
Delivery equipment				
			200.00	
Depreciation and depletion res.			140.00	60.00
		2,500.00		860.00
LIABILITIES AND CAPITAL				
Accounts payable				
Notes payable				
Long term debt				
Due Officers				4.17
Preferred stock				
Common stock	2,500.00	2,500.00	2,500.00	2,500.00
Retained earnings				(1,644.17)
Total Liabilities and Capital		2,500.00		860.00

EXHIBIT No. 29

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SCHEDULE L—RECONCILIATION OF NET INCOME AND ANALYSIS OF CHANGES IN SURPLUS

Page 3

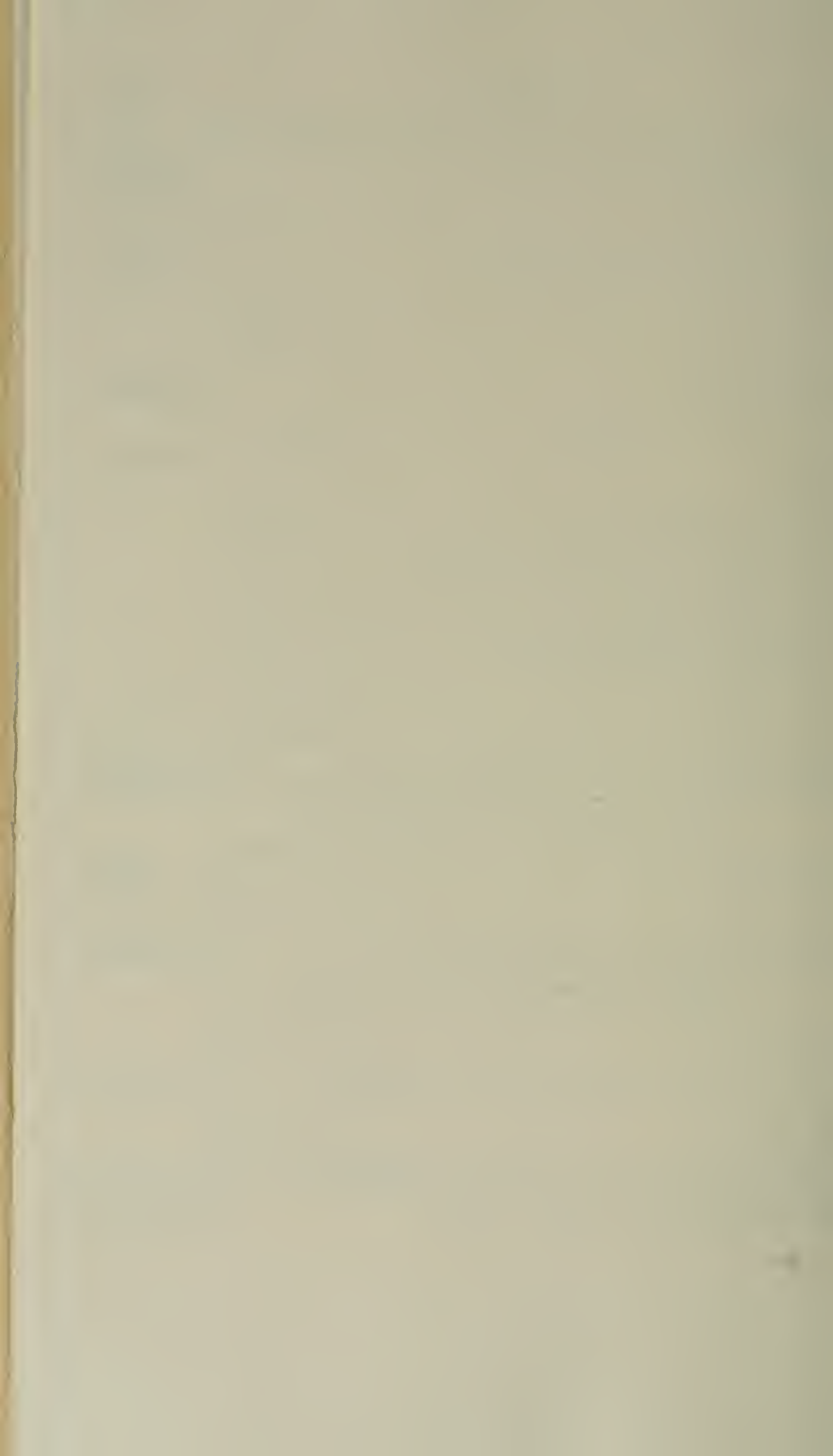
Surplus and undivided profits as shown by balance sheet at beginning of period		None	
Net income from Item 25, page 1 of this return		(2,644.17)	
Non-taxable income (itemization required)			
Charges against reserves for bad debts if item 20, page 1 of this return is not an addition to a reserve		None	
Charges against reserves for contingencies, etc. (itemization required)			
Other credits to surplus (itemization required)			
TOTAL OF LINES 1 TO 6		None	(2,644.17)
Dividends paid during period (State if cash stock or other property):			
Date(s) paid Character	None		None
Date(s) paid Character			
Unallowable deductions:			
Oregon excise tax			
Federal income and excess-profits taxes			
Taxes on, or measured by, income, paid to other states			
Oregon personal property tax	None		
Improvement taxes tending to increase the value of the property assessed			
Furniture, fixtures, additions, or betterments shown as expense on the books			
Replacements and renewals			
Insurance premiums on life of any officer or employee where corporation is directly or indirectly a beneficiary			
Additions to bad debt reserves not included in Item 20, page 1			
Other unallowable deductions	None		None
Other debits to surplus (to be detailed)			
	None		
TOTAL OF LINES 8 TO 10		None	
ENDING SURPLUS AND UNDIVIDED PROFITS AS SHOWN BY BALANCE SHEET (Line 7 minus line 11)			(2,644.17)

SCHEDULE M—RECONCILIATION OF DEPRECIATION RESERVE

Depreciation reserve as shown by balance sheet at beginning of period	Transferred to Corporation	120.00
Amount of depreciation charged off this year		20.00
Other adjustments (to be detailed)		
Depreciation reserve as shown by balance sheet at end of period (Total of lines 1 to 3)		100.00

SCHEDULE N—RECONCILIATION OF RESERVE FOR BAD DEBTS

Bad debt reserve as shown by balance sheet at beginning of period		
Additions to the reserve during the year		
Other credits (to be detailed)		
TOTAL OF LINES 1 TO 3	CASH BASIS	
Charges against reserve during year		
Other debits (to be detailed)		
TOTAL OF LINES 5 AND 6	CASH BASIS	
Bad debt reserve as shown by balance sheet at end of period (Line 4 minus line 7)		



Item	Amount	Item	Amount
and wages			
and supplies			

SEE SCHEDULE 1

SCHEDULE B—PROFIT OR LOSS FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC.

Kind of Property	2 Date		3 Gross Sales Price	4 Depreciation Allowable Since Acquisition	5 Cost	6 Value as of Jan. 1, 1928	7 Subsequent Improvements	8 Net Profit or Loss (Enter as item 10)
	Acquired	Sold						
			NONE					

If property was acquired

SCHEDULE C—COMPENSATION OF OFFICERS

1 Name of Officer	2 Title	3 Time at Business	4 Shares owned (Cm. Pld)	5 Compensation (Enter as item 14)
P. Lindgren	President	All	50%	3,600.00

SCHEDULE D—COST OF REPAIRS

1 Items	2 Amount (Enter as item 16)
Salaries and wages	
	NONE

SCHEDULE E—TAXES

1 Taxes (See instruction 16)	2 Amount (Enter as item 18)
SEE SCHEDULE 1	

SCHEDULE F—DIVIDENDS RECEIVED

1 Name of Corporation	2 Amount Received
	NONE

SCHEDULE G—BAD DEBTS

1 Sales on Account	2 Bad Debts

NONE - CASH BASIS

SCHEDULE H—OREGON PERSONAL PROPERTY TAXES PAID

(The tax must actually be paid. No accrual allowed).—See instruction 26

1 Locality	2 Year of Assessment	3 Date Paid	4 Amount

NONE

SCHEDULE I—EXPLANATION OF DEDUCTION FOR DEPRECIATION

1 Kind of Property (Buildings, other structures, machinery, etc.)	2 Date Acquired	3 Acq. when Acquired	4 Probable Life after Acquisition	5 Cost Excluded (If any)	Amount of Depreciation Charged Off	
					6 Previous Years	7 This Year
Garage House	1953	Old	10 Yrs.	200.00	120.00	20.00

If the corporation owns directly or indirectly through closely affiliated interests, or by a partnership, 55% or more of the

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If the corporation owns directly or indirectly through closely affiliated interests, or by a partnership, 55% or more of the

Exhibit No. 29—(Continued)

LINDORF AND COMPANY

1953

SCHEDULE 1Income

Fryer Sales	\$8,344.40
Meat Sales	327.56
Egg Sales	330.10
Sack Sales	<u>145.36</u>
Total	<u>\$9,147.42</u>

Other Deductions

Briquets	\$144.70
Chickens	86.00
Hay	265.00
Electricity	163.35
Calves	52.00
Legal and Accounting	<u>103.06</u>
Total	<u>\$614.11</u>

Taxes

Social Security	\$ 54.00
Corporation	<u>10.00</u>
Total	<u>\$64.00</u>

[Endorsed]: No. 16131. United States Court of Appeals for the Ninth Circuit. Arthur S. Fleming, Secretary of Health, Education and Welfare of the United States, Appellant, vs. Helmer F. Lindgren, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Oregon.

Filed: August 9, 1958.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In The United States Court of Appeals
For The Ninth Circuit

No. 16131

MARION B. FOLSOM, Secretary of Health, Edu-
cation, and Welfare, Appellant,

vs.

HELMER F. LINDGREN, Appellee.

STATEMENT OF POINTS UPON WHICH
APPELLANT INTENDS TO RELY

The points upon which Marion B. Folsom, Secretary of Health, Education, and Welfare, Appellant, will rely on appeal are:

1. The District Court erred in holding in effect that Appellant was required to accept Appellee's characterization of certain exchanges of funds be-

tween the Appellee and a corporation controlled by him, as wages.

2. The District Court erred in holding in effect that Appellant could not look through form to substance in determining whether, in fact, the purported "wages" were remuneration paid for employment, as required by § 209 of the Social Security Act (42 USC 409).

3. The District Court erred in failing to hold that there was substantial evidence in the record to support a finding by Appellant that a large part of the purported "wages" paid to Appellee were, in fact, not remuneration for employment.

4. The District Court erred in denying the motion of defendant Secretary of Health, Education, and Welfare for summary judgment.

5. The District Court erred in entering judgment for Appellee.

Dated at Portland, Oregon, this 8th day of August, 1958.

C. E. LUCKEY,
United States Attorney,
District of Oregon,
/s/ EDWARD J. GEORGEFF,
Assistant U. S. Attorney,
Of Attorneys for Appellant.

Certificate of Mailing Attached.

[Endorsed]: Filed August 9, 1958. Paul P. O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

DESIGNATION OF CONTENTS OF
THE PRINTED RECORD

Marion B. Folsom, Secretary of Health, Education, and Welfare, Appellant, hereby designates for inclusion in the printed record on appeal to the United States Court of Appeals for the Ninth Circuit taken by Notice of Appeal filed July 2, 1958, the following portions of the record, proceedings and evidence in this action:

1. Complaint;
2. Answer;
3. Defendant's Motion for Summary Judgment;
4. Order of Judge East denying defendant's Motion for Summary Judgment;
5. Judgment of Judge East;
6. Notice of Appeal;
7. Referee's Decision, Transcript Pages 5-10;
8. Transcript, Page 26, Lines 3-15;
9. Testimony, Transcript Pages 28-68;
10. Oregon Corporation Excise Tax Return for 1953, Transcript Pages 159-163;
11. Oregon Corporation Excise Tax Return for 1954, Transcript Pages 149-153;
12. United States Corporation Income Tax Return for 1955, Transcript Pages 108-114;

13. Demand Notes that Lindgren held from Corporation, Transcript Pages 136-144;

14. Designation of the Contents of the Printed Record;

15. Statement of Points Upon which Appellant Intends to Rely;

16. Docket Entries.

C. E. LUCKEY,
United States Attorney,
District of Oregon,

/s/ EDWARD J. GEORGEFF,
Assistant U. S. Attorney,
Of Attorneys for Appellant.

Certificate of Mailing Attached.

[Endorsed]: Filed August 9, 1958. Paul P. O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

MOTION TO SUBSTITUTE THE SUCCESSOR
OF A PUBLIC OFFICER

Comes now the appellant, Marion B. Folsom, by his counsel, and moves the court for an order substituting Arthur S. Flemming, Secretary of Health, Education and Welfare as appellant herein in place of Marion B. Folsom, Secretary of Health, Education and Welfare, resigned. The basis of the motion is set forth in the attached affidavit of Douglas A. Kahn.

C. E. LUCKEY,

United States Attorney,

District of Oregon,

/s/ EDWARD J. GEORGEFF,

Assistant U. S. Attorney.

/s/ ALAN S. ROSENTHAL,

/s/ DOUGLAS A. KAHN,

Attorneys, Department of Justice. Attorneys for
Appellant.

So Ordered:

/s/ WM. HEALY,

Chief Judge.

/s/ O. D. HAMLIN,

United States Circuit Judge.

Certificate of Mailing Attached.

[Endorsed]: Filed August 28, 1958. Paul P.
O'Brien, Clerk.

